

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2022

Public sitting

held on Monday, 17 October 2022, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber, Judge Jin-Hyun Paik, presiding

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

(Mauritius/Maldives)

Verbatim Record

Special Chamber
of the International Tribunal for the Law of the Sea

<i>Present:</i>	President	Jin-Hyun Paik
	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
		Neeru Chadha
		Judges <i>ad hoc</i>
		Nicolaas Schrijver
	Registrar	Ximena Hinrichs Oyarce

Mauritius is represented by:

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

as Agent;

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

as Co-Agent;

and

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

Mr Paul S. Reichler, Attorney-at-Law, Foley Hoag LLP, Washington, D.C.,
United States of America,

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

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

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

as Counsel and Advocates;

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

Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India,

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

Ms Diem Huang Ho, Attorney-at-Law, Foley Hoag LLP, Washington, D.C.,
United States of America,

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

as Counsel;

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

as Adviser;

Mr Scott Edmonds, International Mapping, Ellicott City, United States of
America,

Ms Vickie Taylor, International Mapping, Ellicott City, United States of America,

as Technical Advisers;

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

as Assistant.

Maldives is represented by:

Mr Ibrahim Riffath, Attorney General,

as Agent;

and

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

as Representatives;

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

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

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

Ms Amy Sander, LL.M. (Cambridge); Member of the Bar of England and Wales, Essex Court Chambers, United Kingdom,

Ms Naomi Hart, Ph.D. (Cambridge); Member of the Bar of England and Wales, Essex Court Chambers, United Kingdom,

as Counsel and Advocates;

Mr John Brown, MA FRIN CSci CMarSci, Law of the Sea Consultant, Cooley (UK) LLP, United Kingdom,

Mr Alain Murphy, Ph.D. (New Brunswick), Director, GeoLimits Consulting, Canada,

as Technical Advisers;

Ms Melina Antoniadis, LL.M. (Leiden), Member of the Law Society of Ontario, Canada,

Ms Justine Bendel, Ph.D. (Edinburgh), Marie Curie Fellow, University of Copenhagen; Lecturer in Law, University of Exeter,

Mr Andrew Brown, LL.B. (King's College London), LL.M. Candidate at the Graduate Institute of International and Development Studies, Geneva,

Ms Lefa Mondon, LL.M. (Strasbourg), Lawyer, Sygna Partners, France,

as Assistants.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Please be seated.

2
3 **CLERK OF THE TRIBUNAL:** The Special Chamber of the International Tribunal for
4 the Law of the Sea is now in session. *L'audience de la Chambre spéciale du*
5 *Tribunal international du droit de la mer est ouverte.*

6
7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good morning, everyone. I wish
8 to welcome you all to this hearing. The Special Chamber of the International Tribunal
9 for the Law of the Sea meets this morning to hear the Parties' arguments on the
10 merits in the *Dispute concerning delimitation of the maritime boundary between*
11 *Mauritius and Maldives in the Indian Ocean*. We meet today in the interim courtroom
12 of the Tribunal and it is a pleasure to welcome you again to attend the hearing in
13 person. I wish to kindly ask everyone to ensure that their mobile phone is turned off.

14
15 It should be recalled that by Special Agreement concluded on 24 September 2019,
16 the representatives of the Republic of Mauritius and the Republic of Maldives agreed
17 to submit the dispute concerning delimitation of the maritime boundary between
18 them in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant
19 to article 15, paragraph 2, of the Statute of the Tribunal.

20
21 The Tribunal was notified of the Special Agreement on 24 September 2019 and the
22 Special Chamber was constituted by an Order of the Tribunal of 27 September 2019.
23 The case was entered as No. 28 in the List of Cases.

24
25 On 18 December 2019, the Maldives raised preliminary objections to the jurisdiction
26 of the Special Chamber and to the admissibility of Mauritius' claims pursuant to
27 article 97, paragraph 1, of the Rules of the Tribunal. On 28 January 2021, the
28 Special Chamber delivered its judgment on the preliminary objections of the
29 Maldives. In its judgment, the Special Chamber found that it had jurisdiction to
30 adjudicate upon the dispute submitted to it by the Parties concerning the delimitation
31 of the maritime boundary between them in the Indian Ocean and that the claim
32 submitted by Mauritius in this regard was admissible.

33
34 I now call on the Registrar to summarize the procedure relating to the merits of the
35 case and to read out the submissions of the Parties.

36
37 **REGISTRAR:** Thank you, Mr President.

38
39 By order of 3 February 2021, the President of the Special Chamber fixed 25 May and
40 25 November 2021 as the time limits for the filing, respectively, of the Memorial of
41 Mauritius and the Counter-Memorial of the Maldives. The Memorial and the Counter-
42 Memorial were filed within the prescribed time limits.

43
44 By order of 15 December 2021, the President of the Special Chamber authorized the
45 submission of a Reply by Mauritius and of a Rejoinder by the Maldives and fixed
46 14 April 2022 and 15 August 2022, respectively, as the time limits for the filing of
47 these two pleadings. The Reply and the Rejoinder were duly filed within the
48 prescribed time limits.

49
50 I will now read out the submissions of the Parties.

1 In its Reply, Mauritius makes the following submissions:

2

3 Mauritius respectfully requests the Special Chamber to adjudge and declare that:

4

5 (1) The maritime boundary between Mauritius and Maldives in the Indian Ocean
6 connects the following points, using geodetic lines (the geographic coordinates are in
7 WGS 1984 datum).

8

9 (2) Maldives shall pay to Mauritius a reasonable sum, being not less than €460,000,
10 to cover the reasonable additional costs incurred by Mauritius in the conduct of the
11 scientific survey of Blenheim Reef and appurtenant waters and islands, as a
12 consequence of the unreasonable refusal of Maldives to allow any part of its territory
13 to be used in the conduct of the survey.

14

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

17

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

19

20 The Republic of Maldives requests the Special Chamber to adjudge and declare
21 that:

22

23 (a) Mauritius' claim to a continental shelf beyond 200 Miles from the baselines from
24 which its territorial sea is measured should be dismissed on the basis that it is:

25

- 26 (i) outside the jurisdiction of the Special Chamber; and/or
- 27 (ii) inadmissible.

28

29 (b) The single maritime boundary between the Parties is a series of geodesic lines
30 connecting the following points 1 to 46.

31

32 (c) In respect of the Parties' Exclusive Economic Zones, the maritime boundary
33 between them connects point 46 to the following point 47 *bis* following the 200 Miles
34 limit measured from the baselines of the Maldives:

35

36 (d) In respect of the Parties' continental shelves, the maritime boundary between the
37 Parties continues to consist of a series of geodesic lines connecting the following
38 points, until it reaches the edge of the Maldives' entitlement to a continental shelf
39 beyond 200 Miles from the baselines from which the breadth of its territorial sea is
40 measured (to be delineated following recommendations of the Commission on the
41 Limits of the Continental Shelf at a later date):

42

43 (e) Mauritius' request that the Maldives be ordered to pay to Mauritius certain costs
44 incurred by Mauritius in the conduct of its survey of Blenheim Reef be dismissed.

45

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

48

49 By order dated 18 August 2022, the President of the Special Chamber fixed
50 17 October 2022 – that is, today – as the date for the opening of the hearing.

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

4
5 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Madam Registrar.

6
7 In accordance with the arrangements on the organization of the procedure decided
8 by the Special Chamber, the hearing will comprise a first and second round of oral
9 argument. The first round will begin today and will close on Friday, 21 October 2022
10 following a morning sitting. The second round will take place during the afternoon of
11 Saturday, 22 October 2022 and the morning of Monday, 24 October 2022.

12
13 Today's sitting, in the course of which Mauritius will present the first part of the
14 statement, will last until one o'clock and, as usual, there will be a 30-minute break
15 between 11:30 and midday. After the lunch break the hearing will be resumed at
16 3 p.m.

17
18 I note the presence at the hearing of Agents, co-Agents, representatives, counsel
19 and advocates of Mauritius and the Maldives.

20
21 I now call on the Agent of Mauritius, Mr Dheerendra Kumar Dabee, to introduce the
22 delegation of Mauritius. You have the floor, Mr Dabee.

23
24 **MR DABEE:** Mr President, distinguished Members of the Special Chamber, Madam
25 Registrar. Good morning.

26
27 It is my pleasure to introduce the members of the Mauritius delegation. My name is
28 Dheerendra Kumar Dabee. I was Solicitor-General of Mauritius when the
29 proceedings started and now I am the legal adviser and consultant in the Agent's
30 office, and have remained as Agent of Mauritius.

31
32 The Co-Agent for Mauritius is His Excellency Mr Jagdish Dharamchand Koonjul,
33 Ambassador and Permanent Representative of the Republic of Mauritius to the
34 United Nations.

35
36 The members of the delegation are as follows: as counsel and advocates,
37 Mr Philippe Sands King's Counsel, Professor of International Law at University
38 College London, Barrister at 11 King's Bench Walk, London, UK; Mr Pierre Klein,
39 Professor of International Law at the Université Libre de Bruxelles, Belgium;
40 Mr Andrew Loewenstein, Attorney-at-Law, Foley Hoag USA; Mr Yuri Parkhomenko,
41 Attorney-at-Law, Foley Hoag, Boston, USA; Mr Remi Reichhold, Barrister at
42 11 King's Bench Walk, London, UK; Dr Mohammed Rezah Badal, Director-General,
43 Department for Continental Shelf, Mauritius' Maritime Zones Administration and
44 Exploration, Prime Minister's Office, Mauritius.

45
46 As counsel we have Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India;
47 Ms Diem Huang Ho, Attorney-at-Law, Foley Hoag USA; Ms Sun Young Hwang,
48 Attorney-at-Law, again at Foley Hoag Washington, USA.

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

3
4 As technical adviser, we have Mr Scott Edmonds and Ms Vickie Taylor, both of
5 International Mapping, Ellicott City, Maryland, United States.

6
7 As assistant we have Ms Nancy Lopez, again Foley Hoag LLP, Washington, DC,
8 USA.

9
10 Finally, allow me to recognize our ambassador in Germany, Her Excellency
11 Ms Christelle Sohun, who is in the gallery.

12
13 As you would have noted, I did not mention the name of Mr Paul Reichler, who was
14 to be part of the Mauritius delegation as communicated to the Special Chamber on
15 4 October. Unfortunately, for medical reasons Mr Reichler has been unable to travel
16 to Hamburg, and he deeply regrets not being able to be here.

17
18 Mr President, I wish to conclude the introduction of the delegation of Mauritius by
19 assuring you the Maldives teams have our full collaboration to ensure that the
20 hearing proceeds smoothly. Thank you, Mr President, Members of the Special
21 Tribunal.

22
23 **THE PRESIDENT OF THE SPECIAL TRIBUNAL:** Thank you, Mr Dabee.

24
25 I now call on the Agent of Maldives, His Excellency Mr Ibrahim Riffath, Attorney
26 General of the Republic of Maldives, to introduce the delegation of the Maldives.

27
28 **MR RIFFATH:** President, Tribunal Members of the Special Chamber, Madam
29 Registrar, members of the delegation of Mauritius, my name is Ibrahim Riffath; I am
30 the Attorney General of the Maldives and the Maldives' Agent in these pleadings.

31
32 It is my pleasure to introduce the members of the Maldives team. I am joined by
33 Ms Shabeen, Deputy Attorney General of the Republic of Maldives, and Ms Mariyam
34 Shaany, State Counsel in the Office of the Attorney General.

35
36 Also in the delegation of counsel and advocates are: Professor Payam Akhavan of
37 the University of Toronto and a Member of the Permanent Court of Arbitration;
38 Professor Jean-Marc Thouvenin, of the University Paris-Nanterre; Professor Makane
39 Moïse Mbengue, of the University of Geneva; Ms Amy Sander of Essex Court
40 Chambers in London; and Dr Naomi Hart, also of Essex Court Chambers.

41
42 Our delegation has two technical advisers: Mr John Brown of Cooley (UK) LLP, and
43 Mr Alain Murphy of GeoLimits Consulting; Ms Melina Antoniadis; Ms Justine Bendel;
44 Mr Andrew Brown and Ms Lefa Mondon assist in the delegation.

45
46 Thank you, Mr President.

47
48 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Riffath.

49

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

3

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

9

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

15

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

24

25 As we move to the stage of the hearing on the merits, I wish to draw attention to two
26 significant developments which have occurred since your judgment on preliminary
27 objections.

28

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

39

40 Second, following the survey, in August of this year, the President of the Republic of
41 Maldives, His Excellency Mr Ibrahim Mohamed Solih, wrote to the Prime Minister of
42 Mauritius, Hon. Pravind Kumar Jugnauth, to confirm a significant change of position
43 on the part of Maldives.² The Maldives’ President has, in the letter, provided an
44 assurance to the Mauritian Prime Minister that Maldives would vote “yes” to a
45 forthcoming UN General Assembly Resolution reaffirming the ICJ’s Advisory Opinion

¹ Mauritius Reply, Annex 1, Geodetic Survey of Blenheim Reef, 22 February 2022 (hereinafter “Geodetic Survey”).

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

1 on the *Legal Consequences of the Separation of the Chagos Archipelago from*
2 *Mauritius in 1965* and UN General Assembly Resolution 73/295.³

3
4 The Maldives' President gave a further assurance that Maldives will provide every
5 assistance to facilitate the future travel of the Prime Minister of Mauritius through
6 Maldives to the Chagos Archipelago.

7
8 In reliance on those assurances, Mauritius, in turn, informed Maldives of its decision
9 to leave to the past the difficulties that arose with regard to the survey, in particular
10 the conditions that Maldives sought to impose with respect to the composition of
11 Mauritius' survey team and the obtaining of "necessary clearances" from the unlawful
12 colonial administration in the Chagos Archipelago. On the basis of Maldives'
13 assurances, Mauritius no longer pursues its request that the Special Chamber
14 exercise its discretion pursuant to article 34 of the ITLOS Statute and article 125 of
15 the ITLOS Rules with regard to the significant additional costs incurred by Mauritius
16 in carrying out the survey.

17
18 Mr President, Maldives' change of position is most appreciated. We are neighbouring
19 countries with shared interests and common challenges. We welcome the clear
20 commitment of Maldives to respect the Special Chamber's judgment on preliminary
21 objections. It also reaffirms that, despite our differences with regard to the
22 delimitation of our common maritime boundary, Mauritius and Maldives continue to
23 enjoy long-standing warm and friendly relations, fostered over more than four
24 decades. Mauritius and Maldives are Small Island Developing States which are
25 confronted with the effects of climate change, sea-level rise, economic and
26 environmental vulnerabilities, and inherent structural handicaps such as distance
27 from larger markets, and are dependent on tourism, which was severely impacted by
28 the COVID-19 pandemic. There is so much common ground between Mauritius and
29 Maldives, on so many issues, and that is evident from the tone of the recent
30 exchange of correspondence between the Maldives' President and Mauritius' Prime
31 Minister.

32
33 As small island States, Mauritius and Maldives appreciate the value of ocean
34 resources and attach great importance to measures to preserve and protect the
35 environment. The Parties also attach much importance to the matter now before you,
36 i.e., the delimitation of our maritime boundary in the Indian Ocean.

37
38 As anticipated in articles 74(1) and 83(1) of the Convention, Mauritius sought to
39 achieve a negotiated solution for many years, first inviting Maldives to preliminary
40 talks in June 2001.⁴ Despite recognizing the existence of an overlap in our maritime
41 entitlements, Maldives subsequently declined to engage in further negotiations, and
42 that is why we are here today. Mauritius was left with no choice but to resort to
43 Part XV of the Convention and filed its Notification of Claim under article 287 and

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

⁴ See Mauritius' Memorial, paras. 3.23.5; 3.203.25; Mauritius's Reply, paras. 3.73.11.

1 Annex VII of the Convention.⁵ Mauritius did so for two reasons: first, to resolve the
2 difference between the Parties as to their overlapping entitlements in the EEZ and
3 the continental shelf within and beyond 200 Miles; and, second, to enable Mauritius
4 to definitively establish its maritime spaces and sovereign rights under international
5 law, within and beyond 200 Miles.

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

13
14 Mr President, I will now briefly summarize Mauritius' first round of oral presentations
15 in this hearing on the merits.

16
17 Professor Sands, Mr Parkhomenko and Mr Reichhold will all address you on the
18 delimitation within 200 Miles. First, Professor Sands will provide an overview of
19 Mauritius' claim, including the evidential and legal consequences that flow from
20 Mauritius' site visit to Blenheim Reef. In particular, the survey revealed vast stretches
21 of drying reef, exposed not only at low tide, but also at mean sea level, extending to
22 19 kilometres of Blenheim Reef's perimeter, in particular in the north, facing
23 Maldives.⁷ The survey was most useful in establishing the extent of Blenheim Reef
24 as a drying reef. Consequently, Blenheim Reef qualifies both as a low-tide elevation
25 for the purposes of article 13(1) of the Convention and also as a "drying reef" within
26 the meaning of article 47. Under either of these provisions, in Part II and Part IV of
27 the Convention, Blenheim Reef, which lies less than 12 Miles from Takamaka Island,
28 must therefore be regarded as an integral part of Mauritius' coast from which to
29 measure the territorial sea, the EEZ and continental shelf, within and beyond 200
30 Miles. Pursuant to those provisions, and in accordance with relevant judicial practice,
31 Blenheim Reef is entitled to supply basepoints from which to construct a median or
32 equidistance line. Professor Sands will also outline the points of agreement between
33 the parties and the four points of disagreement which you are tasked with resolving.

34
35 Mr Parkhomenko's presentation, which will follow that of Professor Sands', will focus
36 on Part II of the Convention. He will explain why, at the first stage of the now well-
37 established three-stage delimitation process that both Parties agree upon, Blenheim
38 Reef – as a low-tide elevation within the meaning of article 13(1) – must be taken
39 into account in the construction of the provisional equidistance line within 200 Miles.
40 As the Members of the Special Chamber are aware, the construction of the
41 provisional equidistance line in stage one of the process is an objective,
42 mathematical process without room for subjective judgments about particular
43 geographic features. This rule has been laid down by no less an authority than this
44 eminent Tribunal in the *Bangladesh v. Myanmar* case,⁸ as well as by the ICJ and

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

⁶ Special Agreement and Notification dated 24 September 2019.

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

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

1 Annex VII tribunals. Mr Parkhomenko will conclude his presentation by showing you
2 the provisional equidistance line that results from this objective process, taking
3 account of all features on the relevant coasts of both Parties, including Blenheim
4 Reef.

5
6 Professor Sands will then address you on Part IV of the Convention, and the
7 maritime entitlements which flow from Mauritius' archipelagic baselines. As an
8 archipelagic State, Mauritius, in line with its entitlement, has drawn archipelagic
9 baselines encompassing Blenheim Reef as a "drying reef" within the meaning of
10 article 47 of the Convention. That provision makes no distinction whatsoever
11 between a drying reef and an island. As such, Mauritius' archipelagic baselines
12 encompassing Blenheim Reef confer precisely the same entitlement to a full
13 maritime area, up to and beyond 200 Miles, in the same way as a baseline along the
14 low-water line around an island, or along a mainland coastline.

15
16 As Professor Sands will explain, this case features a unique characteristic: it is, as
17 far as we can ascertain, the first time that an international court or tribunal has been
18 tasked with delimiting the maritime boundary between two archipelagic States. It
19 would be contrary to Part IV of the Convention, in such a case, to ignore, or
20 disregard, the archipelagic baselines of one of those States, especially in a situation
21 where they have been drawn in strict compliance with article 47 and gained wide
22 international approval and acceptance. Professor Sands will show that, in stage one
23 of the three-stage process, with basepoints properly placed along Mauritius'
24 archipelagic baselines at Blenheim Reef, the resulting provisional equidistance line is
25 exactly the same as the one shown by Mr Parkhomenko on the basis of article 13.

26
27 Next, Mr Reichhold will take you through stages two and three of the three-stage
28 process, on the basis of the provisional equidistance line that results from stage one,
29 under either of Mauritius' two approaches: namely, treatment of Blenheim Reef as a
30 low-tide elevation integrally connected to Mauritius' coast, or as a drying reef along
31 Mauritius' archipelagic baselines; and he will demonstrate that at the second stage,
32 there are no special or relevant circumstances calling for any adjustment to the
33 provisional equidistance line, which is neither disproportionate nor prejudicial to
34 Maldives in any significant way. Then he will demonstrate that the unadjusted
35 equidistance line passes the disproportionality test at stage three, and that this line is
36 almost perfectly proportionate, and constitutes the equitable solution that articles 74
37 and 83 of the Convention require. Mr Reichhold will conclude with Mauritius'
38 submission on the boundary within 200 Miles: it is an unadjusted equidistance line
39 taking account of all basepoints on the two Parties' relevant coasts, including those
40 drawn around Blenheim Reef.

41
42 Following Mr Reichhold, Professor Klein will begin Mauritius' presentation on the
43 delimitation beyond 200 Miles by addressing you on Maldives' outstanding
44 preliminary objection in relation to jurisdiction and admissibility. First, Professor Klein
45 will demonstrate that the Special Chamber is competent to proceed with the
46 delimitation of the continental shelf beyond 200 Miles. This has been an integral part
47 of the maritime delimitation dispute between the Parties from 2010 onwards and falls

1 within the ambit of Mauritius' Notification and the Special Agreement.⁹ Second,
2 Professor Klein will show that Mauritius has made a timely submission to the
3 Commission on the Limits of the Continental Shelf ("CLCS") with regard to the
4 Northern Chagos Archipelago Region and that Maldives has had a full and proper
5 opportunity to respond to Mauritius' extended continental shelf claim.
6

7 Thereafter, Dr Badal will make a submission on the scientific and technical material
8 concerning Mauritius' entitlement to an extended continental shelf, included in
9 Mauritius' submission to the CLCS, giving rise to overlapping entitlements between
10 the Parties beyond 200 Miles. First, he will address the geomorphological and
11 geophysical circumstances, confirming the existence of a natural prolongation
12 extending from the northern portion of the Chagos Archipelago. Second, he will
13 address the test of appurtenance and the delineation of Mauritius' extended
14 continental shelf.
15

16 In relation to the letter of the honourable Agent of Maldives dated 10 October 2022,
17 I wish to make clear that Dr Badal addresses the Special Chamber in his capacity as
18 counsel for Mauritius. The matters to which Dr Badal will refer go no further than
19 those set out in Mauritius' submissions to the CLCS, and to the extent that it is
20 necessary to respond to the points raised by Maldives in its Rejoinder. He is not a
21 witness and his submissions to the Special Chamber will address the evidence that
22 has already been submitted with Mauritius' pleadings.
23

24 Finally, Mr Loewenstein will address you on the equitable delimitation of the Parties'
25 overlapping entitlements in the extended continental shelf beyond 200 Miles,
26 amounting to approximately 22,272 square kilometres. Whereas Maldives invites you
27 to apportion the area in the ratio of 99-to-1 in its favour, Mr Loewenstein will show
28 that pursuant to article 83(1), the Convention mandates an equitable solution, which,
29 in the circumstances of this case, is achieved by according each Party an equal
30 share of the overlapping entitlements beyond 200 Miles.
31

32 Mr President, Members of the Special Chamber I would like to take this opportunity
33 to reiterate that Mauritius would welcome the appointment of an expert to prepare an
34 opinion on the scientific and technical issues concerning the delimitation of the
35 continental shelf beyond 200 Miles, should the Special Chamber consider it
36 necessary to do so. We respectfully submit that the Special Chamber would benefit
37 from an expert opinion on the hydrography, geology and geomorphology of the area
38 at issue. We have presented our detailed views on the matter in our letter of
39 30 August 2022, and responded to Maldives' objections in our letter of 5 September
40 2022. For the reasons set out in the letters, Mauritius stands by its earlier
41 communications.¹⁰
42

43 Mr President, Members of the Special Chamber, it is a privilege for Mauritius to
44 participate in these proceedings before this Special Chamber of ITLOS. My

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

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

1 delegation will remain available to provide any such assistance as the Special
2 Chamber might need. We will be pleased to offer our fullest collaboration and
3 cooperation to the delegation for Maldives in making this hearing as helpful as
4 possible for the Special Chamber. In addition to the questions communicated to the
5 Parties yesterday afternoon, we would welcome, of course, further questions from
6 the Special Chamber.

7
8 I also wish to inform the Special Chamber that we have already provided the
9 supporting scientific and technical data of the submission made by Mauritius to the
10 CLCS in April 2022. This addresses question 4 in the list of questions received
11 yesterday afternoon. Questions 1, 2 and 3 will be answered in the presentations of
12 the members of our delegation later today.

13
14 To assist the Special Chamber, we have provided a folder for each judge. This
15 contains the recent correspondence between the Maldives' President and Mauritius'
16 Prime Minister to which I referred earlier, and copies of the graphics that will appear
17 on your screens throughout the day. Copies of our judges' folders have also been
18 provided to the ITLOS Registry and to our friends from Maldives.

19
20 Mr President, I now respectfully request that you invite Professor Sands to make his
21 first presentation. Thank you, Mr President and Members of the Special Chamber,
22 for your kind attention.

23
24 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Dabee. I now give
25 the floor to Mr Philippe Sands to make his statement. You have the floor, Sir.

26
27 **MR SANDS:** Mr President, Members of the Special Chamber, it is a privilege to
28 appear before you once again on behalf of Mauritius and here in person, in
29 Hamburg. My task this morning is to introduce Mauritius' arguments, with a focus on
30 two aspects of this case. First, I am going to address certain evidential and legal
31 consequences that flow from the site visit that Mauritius was able to carry out a few
32 months ago, in the northern parts of the Chagos Archipelago. Second, I will address
33 the key points of agreement and disagreement between the Parties; as with so many
34 cases, the written pleadings have allowed those issues to be narrowed.

35
36 Mr President, allow me to begin with the site visit and to start with some words of
37 appreciation which followed this Tribunal's clear judgment on jurisdiction. Mauritius,
38 as you know, was able to organize and conduct a site visit. It is not possible to
39 overstate the significance of the visit.¹¹ You get a sense from this video, which is of
40 course in the public domain, of the nature of the location.

41
42 The voyage was historic: it was the first visit ever organized by the Republic of
43 Mauritius to the Chagos Archipelago since the territory was unlawfully detached and
44 Mauritius gained its independence in 1968. It was the first time that members of the
45 Chagossian community, who had been forcibly removed from the Chagos

¹¹ Cullen Murphy, "They Bent to Their Knees and Kissed the Sand", *The Atlantic* (15 June 2022), available at <https://www.theatlantic.com/magazine/archive/2022/07/reclaiming-chagos-islands-british-colonization/638444/> (last accessed 15 October 2022).

1 Archipelago, could return without an armed British escort.¹² It was the first time the
2 flag of the Republic of Mauritius flew over the archipelago; the islands of Peros
3 Banhos, Salomon and Blenheim Reef. And it was the first time that Mauritius – or
4 indeed anybody, ever – had conducted a rigorous scientific and technical survey of
5 certain maritime features and the appurtenant waters.
6

7 Back then, earlier this year, the enthusiasm of the Maldives for the visit was perhaps
8 not entirely unbridled, but there has been a change of tone, as noted by our Agent,
9 which we warmly welcome, with assurances on which Mauritius has placed reliance.
10 Mauritius looks forward to being able to count on the full support of the Maldives in
11 facilitating travel to and from, and other activities in relation to, the Chagos
12 Archipelago. This is exactly as it should be between two friendly, neighbouring
13 countries; it is a seamless connection between Africa and Asia.
14

15 In the end, the journey had to be arranged from Seychelles. On 8 February of this
16 year, a Mauritian team of 25 individuals boarded the vessel *Bleu de Nîmes* at the
17 port in Mahé. Led by Ambassador Koonjul, the group comprised scientists from the
18 Mauritian Department for Continental Shelf, Maritime Zones Administration and
19 Exploration (CSMZAE), two marine scientific experts from Sweden, members of the
20 Mauritian legal team, government officials, Mauritian and international journalists and
21 five members of the Chagossian community who have particular knowledge of the
22 islands, including the area around Blenheim Reef.
23

24 It took five days to sail the 975 nautical miles from Mahé to Peros Banhos. The
25 survey team then spent five full days at Blenheim Reef, Peros Banhos and Salomon.
26 It took another five days to then sail back to Mahé.
27

28 The results of the scientific and technical survey are set out in the Geodetic Survey
29 Report of Ola Oskarrson and Thomas Mennerdahl. They provided new, detailed,
30 objectively verifiable and significant material and evidence, which Mauritius has put
31 before the Special Chamber in its Reply.¹³ As a result of this survey, Mauritius has
32 been able to obtain more accurate and detailed information about Blenheim Reef,
33 and we hope might assist the Special Chamber. Of particular significance is the new
34 evidence revealed by the survey which established the existence of extensive areas
35 of “drying reef” – I use these words in the sense of article 47 of the 1982 Convention
36 – along the northern, eastern and western flanks of Blenheim Reef’s seaward
37 perimeter. This includes the areas that directly face Maldives, and so are directly
38 relevant for the delimitation of the maritime boundary.
39

40 Let us be clear: Mauritius, the Maldives and everyone else was previously aware of
41 the existence of some drying reef on Blenheim, but this information was only to be
42 found in remote satellite imagery and large-scale hydrographic charts. The new
43 information – on the nature and extent of the drying reef – was not known. The site
44 visit, and the scientific investigation that was carried out, has changed the state of

¹² Chiamaka Okafor, “Mauritius hoists flag on Chagos Archipelago, says it’s reclaimed territory from Britain”, *The Premium Times* (15 February 2022), available at <https://www.premiumtimesng.com/foreign/africa/511647-mauritius-hoists-flag-on-chagos-archipelago-says-its-reclaimed-territory-from-britain.html> (last accessed 15 October 2022).

¹³ Ola Oskarrson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, (hereinafter “the Survey Report”), 22 February 2022, Mauritius Reply, Vol. III, Annex 1.

1 our knowledge. Before the investigation, it was not known that the drying reef
2 extends to some 19 kilometres of Blenheim Reef’s circumference.¹⁴ The Special
3 Chamber can now proceed on the basis of evidence that has been corroborated by
4 an independent expert, Dr David Dodd.¹⁵ The results of the survey, and of Dr Dodd’s
5 opinion, have not been challenged by the Maldives.
6

7 I turn first to the findings of the survey, the unchallenged findings, which are set out
8 in the Reply. Blenheim Reef, which you can see in the top right-hand corner of the
9 plate on your screens, is situated on the north-eastern fringe of the Chagos
10 Archipelago. It is some 10.6 nautical miles east-northeast of Salomon Islands Atoll.
11 Blenheim Reef covers approximately 36 square kilometres. It is a lagoon encircled
12 by coral heads, rocks and unconsolidated material, including sand and granulated
13 corals. From north to south, Blenheim Reef extends for 9.6 km, whilst at its widest
14 point, from east to west, it spans 4.7 km.¹⁶ The north-eastern part of Blenheim Reef,
15 which faces Maldives and which you can see from the air (you can see on this plate
16 right now) features very extensive areas of drying sand, coral sand and coral blocks.
17 In its written pleadings, Maldives would have you believe this is a small and
18 insignificant feature. It is not, as you can see on your screens, with the survey
19 vessel, tiny in the foreground, for scale.
20

21 From 13 to 16 February 2022, Mauritius carried out a geodetic survey of Blenheim
22 Reef – you can see the whole area on your screen on the plate in front of you. This
23 was based on tide models and in situ surveys undertaken using advanced pressure
24 tidal recorders, satellite receivers, and aerial photography from low-flying drones, as
25 you can see on the screen. Using these instruments, the survey team calculated the
26 tide model of Blenheim Reef, which was then used to calculate the Mean Seawater
27 Level (MSL), the Lowest Astronomical Tide (LAT), and the Highest Astronomical
28 Tide (HAT). On the next plate you can see the rise and fall of the water level –
29 approximately 1.6 metres – over nine days. As a result, the survey team identified
30 rocks and coral heads located along the perimeter of the lagoon, as well as
31 extensive areas of drying sands that were exposed at Mean Sea Level along the
32 reef’s outermost perimeter, as you can see on this next plate.
33

34 The Survey Report sets out the details of the equipment used and where precisely it
35 was positioned along the reef.¹⁷ The findings of Blenheim Reef’s geographic status
36 relative to Lowest Astronomical Tide were confirmed by the use of drones that
37 captured high and low altitude images of the reef, as you can see from this plate.
38 The images clearly show extensive areas of drying reefs and sands, including
39 exposed coral heads. These features begin to uncover at or near Mean Seawater
40 Level and extend significantly in area as the tidal flow reaches Lowest Astronomical
41 Tide.

¹⁴ *Ibid.*, p. 5.

¹⁵ Dr David Dodd, Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references, 28 March 2022, Mauritius’ Reply, Vol. III, Annex 2.

¹⁶ The Survey Report, p. 5.

¹⁷ The operation included placement of two water level recorders on the seafloor of the reef’s lagoon; three “global navigation satellite system” (GNSS) recording base stations were located along Blenheim’s drying reefs based on report prepared by EOMAP. Finally, selected areas were photographed using low-flying drones to produce orthomosaics and photogrammetry models of the more significant areas where drying reefs were prevalent.

1 Maldives says this is a “reef covered with water and waves just breaking at its
2 highest point.”¹⁸ But it is not, as you can see from these three images that are now
3 on the screen. Of course, although I cannot give testimony as a witness, I can tell
4 you that I was there and I walked on this drying reef. The survey team established
5 that there were numerous rocks, coral heads and drying reefs exposed at Mean Sea
6 Level. This directly contradicts Maldives’ claim that Blenheim Reef is “barely above
7 water at lowest tides and completely submerged at other times.”¹⁹

8
9 Drones were used to take overlapping photos within the survey area, which were
10 then processed by specialist software, to create a single orthomosaic image. The
11 one you can see on your screens is at position 3, along the northern-eastern
12 coastline of Blenheim Reef, directly facing the Maldives. This image shows large
13 swathes of drying reef.

14
15 Along the north-eastern edge of Blenheim Reef there are many such areas of drying
16 sands and coral blocks easily visible as soon as the tide begins to drop from its
17 highest levels. In total, 70 per cent – 70 per cent – of the reef’s entire circumference
18 of 27.2 kilometres – that is, some 19 kilometres – is composed primarily of drying
19 reefs.²⁰ I should add, Mr President, that these scientific findings are not contested by
20 the Maldives’ Rejoinder.

21
22 While the seafloor surrounding the reef, and the seafloor within the enclosed lagoon,
23 is mainly composed of a mix of coral fragments, sand and a granulated coral and
24 sand mix, the drying reefs have a more consolidated appearance. They consist
25 primarily of rocky coral beds and outcroppings, coral sand and larger coral fragments
26 scattered throughout their rugged surfaces.²¹

27
28 Mr President, Mauritius has only been able to obtain this information and evidence
29 as a result of the on-site survey. To visit Blenheim Reef for the first time, as occurred
30 on the morning of 13 February, was transformative of the state of our knowledge of
31 the reef. The scientists were struck by the vastness of Blenheim Reef, stretching as
32 far as the eye can see and beyond. They were struck by the nature and extent of
33 those parts of the reef that were “drying”, and by the number and size of rock and
34 coral outcroppings. The satellite imagery and large-scale charts, which is all that
35 Mauritius had access to before the survey, had not prepared the team for the extent
36 of the “drying reef” that could be seen above water at Mean Sea Level. It is difficult to
37 overstate the enormity of Blenheim Reef or, indeed, its beauty.

38
39 It was these observations that caused the legal team to consider the implications of
40 the true nature – on the basis of facts and evidence – of Blenheim Reef, and to
41 revisit the text of the 1982 Convention, and in particular its Part IV, on Archipelagic
42 States. We re-read those articles, and in particular the provisions on archipelagic
43 baselines. With this different eye we looked again at article 47(1), which provides
44 that an “archipelagic State may draw straight archipelagic baselines joining the
45 outermost points of the outermost islands and drying reefs of the archipelago”,
46 provided that certain conditions are met. And article 48, which states that

¹⁸ Maldives’ Counter-Memorial, para. 108.

¹⁹ Maldives’ Counter-Memorial, para. 104.

²⁰ The Survey Report, p. 5.

²¹ *Ibid.*

1 [t]he breadth of the territorial sea, the contiguous zone, the exclusive economic
2 zone and the continental shelf shall be measured from the archipelagic
3 baselines drawn in accordance with article 47.
4

5 Mr President, the on-site survey – and the vast swathes of drying reef seen by the
6 experts of Mauritius – caused the Applicant to reflect further, and to revisit and refine
7 the approach adopted in the Memorial with regard to the delimitation with which you
8 are faced.
9

10 Significantly, Maldives does not contest any of the findings of the geodetic survey. At
11 paragraph 5 of the Rejoinder, Maldives asserts that the survey is “irrelevant”,
12 because it does no more than confirm
13

14 what was already common ground between the Parties: namely, that Blenheim
15 Reef includes ‘drying reefs’ which are above water only at low-tide, constituting
16 LTEs under UNCLOS Article 13.²²
17

18 Mr President, with these words in mind, was it the case, in fact, that the Parties had
19 agreed that Blenheim Reef consisted of “drying reefs” within the meaning of
20 article 47 of the Convention? It was not. If you review the entirety of the Maldives’
21 Counter-Memorial, you will see that the words “drying reef” do not appear in the
22 pleading, not once. The existence, nature and effect of Blenheim’s “drying reefs”
23 were not in the minds of the drafters of that pleading. And that fact – for it is a fact –
24 rather begs the question: how can Maldives have had common ground with
25 Mauritius, on the matter of the legal effects of the drying reefs, if it had not turned its
26 mind to those words – “drying reefs”? Moreover, as the survey has now – and newly
27 – made clear, the extensive areas of drying reef are above water not only at Lowest
28 Astronomical Tide, but also at Mean Sea Level.
29

30 What are the legal consequences of this fact, established by incontrovertible – and
31 uncontroverted – proof before the Tribunal?
32

33 The evidence before the Tribunal establishes that the drying reefs of Blenheim Reef
34 make it an extensive low-tide elevation within the meaning of article 13 of the
35 Convention. It is not, however, 57 separate low-tide elevations, as now claimed by
36 Maldives.²³ We have no idea, incidentally, where the number 57 comes from, as it is
37 not in our pleadings and it is not in the Survey Report. As an extended low-tide
38 elevation – situated approximately 10.5 Miles from Île Takamaka in Salomon Islands
39 Atoll, which is permanently above water – Mauritius is entitled to locate basepoints
40 on Blenheim Reef, and these basepoints can properly be utilized for the delimitation.
41 This is what we set out in our Memorial.²⁴ Mr Parkhomenko will address this aspect
42 following my presentation and make clear that Maldives’ attempts to minimize the
43 significance of the reef, for the purpose of excluding it from the well-established
44 procedure for delimitation of the maritime boundary between Mauritius and Maldives,
45 are entirely without merit.
46

²² Maldives’ Rejoinder, para. 5(a).

²³ Maldives’ Rejoinder, paras. 5b, 19, 25, 42, 64.

²⁴ Mauritius’ Memorial, paras. 2.20, 4.28-4.30.

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

8
9 The Special Chamber will be aware that Mauritius' basepoints on Blenheim Reef –
10 the coordinates for which are set out in the Memorial and Reply – are located not
11 only on Mauritius' coast, but also along Mauritius' archipelagic baselines. As an
12 archipelagic State, Mauritius is entitled to use its archipelagic baselines in relation to
13 Blenheim Reef as the basis for all its maritime entitlements. As article 48 makes
14 clear: the territorial sea, EEZ, continental shelf and extended continental shelf are all,
15 in accordance with Part IV of the Convention, to be derived from its archipelagic
16 baselines.

17
18 Moreover, the baselines are also to be utilized for the construction of the
19 equidistance line to delimit the Parties' overlapping entitlements within 200 Miles. As
20 an archipelagic State, Mauritius is entitled, as a matter of law, to use its archipelagic
21 baselines to delimit its maritime boundary with the Maldives.

22
23 I am going to address this in more detail later today, but, in short, Blenheim Reef is
24 both a low-tide elevation under article 13 of the Convention, and a feature with
25 extensive areas of "drying reef" within the meaning of article 47. Here, one aspect of
26 the Convention needs to be teased out. This is relevant for your third question, which
27 I am going to come to in my second presentation today.

28
29 Every drying reef is also a low-tide elevation but not every low-tide elevation is a
30 drying reef. And, under article 47(1) of the Convention, the entitlements of a coastal
31 State that derive from a drying reef may be more extensive than those that may arise
32 from a low-tide elevation. As Mr Parkhomenko and I will explain, articles 13, 74 and
33 83, along with Part IV of the Convention, result in Blenheim Reef being entitled to full
34 effect in the delimitation of the Parties' overlapping entitlements, up to and beyond
35 200 Miles.

36
37 Mr President, Members of the Special Chamber, I turn to the second part of my
38 presentation: the areas of agreement and disagreement between the Parties. Having
39 read the pleadings, you will be aware that there are now significant areas of
40 agreement which narrow the tasks of the Special Chamber.

41
42 First, Mauritius and Maldives agree on the methodology to be adopted in relation to
43 the delimitation of the maritime boundary within 200 Miles. They both invite you to
44 adopt the well-established three-step methodology, often referred to as the
45 "equidistance/relevant circumstances" method, which ITLOS, the ICJ and arbitral
46 tribunals have regularly applied to achieve an equitable delimitation of maritime
47 spaces.²⁵

²⁵ Mauritius' Memorial, paras. 4.2, 4.14-4.47; Maldives' Counter-Memorial, paras. 5, 9, 113; Mauritius' Reply, paras. 1.3(a); Maldives' Rejoinder, para. 2(a).

1 Second, there are significant areas of agreement with respect to the basepoints for
2 the construction of the provisional equidistance line. Mauritius agrees with the
3 selection of all 39 basepoints located on the southern coast of Addu Atoll in the
4 Maldives, which you can see on your screens – which you cannot now see on your
5 screen – but what you can see are the basepoints on which there is not agreement.
6 The Parties are in agreement with respect to 9 of the 13 basepoints on the left-hand
7 side of the screen here on Peros Banhos Atoll, but they do not agree on the four
8 basepoints, numbers 10 to 13, located on Blenheim Reef. I will say more about these
9 basepoints in C83, C84 and C85 later on this morning.

10
11 Third, and subject to one point, the Parties agree that there are no relevant
12 circumstances that call for any adjustment of the provisional equidistance line in the
13 maritime areas up to 200 Miles.²⁶ The one caveat is that the Maldives argues that an
14 adjustment would be required if the Special Chamber were to give Blenheim Reef full
15 effect,²⁷ an argument with which Mauritius is in profound disagreement, as there is
16 no basis in the Convention or in the jurisprudence for that approach. The Parties also
17 agree that the provisional equidistance line does not in any event produce a result
18 that is grossly disproportionate and requiring adjustment.²⁸

19
20 Fourth, Mauritius and Maldives agree that Blenheim Reef is a low-tide elevation
21 within the meaning of article 13.²⁹ That said, Maldives seeks to minimize the
22 significance and effect, arguing in its Counter-Memorial that Blenheim Reef is “barely
23 above water at lowest tides and completely submerged at other times.”³⁰ It was this
24 assertion, in part, that prompted Mauritius to recognize the need to ascertain the
25 facts on the ground, so to speak, and conduct the on-site survey.

26
27 Having initially conceded that Blenheim Reef was a low-tide elevation, the Maldives
28 has now changed its position: in its Rejoinder it now asserts that Blenheim Reef is
29 actually 57 “distinct LTEs rather than a single LTE”.³¹ We do not know where the
30 57 comes from. It sounds a bit like Heinz’s claim that its famous ketchup comprises
31 57 different varieties of tomato. But that claim, as with the ketchup, is false.³²
32 Mr Parkhomenko will address this point shortly.

33
34 Fifth, it is also common ground between the Parties that Blenheim Reef includes
35 areas of “drying reef”.³³ The Parties disagree, however, on the extent of those
36 “drying reefs” and the legal consequences that are to be drawn from the evidence in
37 relation to Part IV of the Convention. I will address this in my second presentation.
38

²⁶ Mauritius’ Memorial, paras. 4.32-4.38; Maldives’ Counter-Memorial, para. 151; Mauritius’ Reply, para. 1.3(c); Maldives’ Rejoinder, para. 2(e).

²⁷ Maldives’ Counter-Memorial, paras. 151-152; Maldives’ Rejoinder, footnote 7.

²⁸ Mauritius’ Memorial, paras. 4.39-4.47; Maldives’ Counter-Memorial, paras. 153-158; Mauritius’ Reply, para. 1.3(d), 2.84-2.88; Maldives’ Rejoinder, para. 2(f).

²⁹ Mauritius’ Memorial, para. 2.20 *et seq.*; Maldives’ Counter-Memorial, para. 106.

³⁰ Maldives’ Counter-Memorial, paras. 104, 108 (“For significant periods of time, Blenheim Reef is fully submerged.”)

³¹ Maldives’ Rejoinder, para. 5(b).

³² Nathaniel Meyersohn, “How Heinz uses a fake number to keep its brand timeless”, *CNN* (19 February 2022) available at <https://edition.cnn.com/2022/02/19/business/heinz-ketchup-57-varieties-history/index.html> (last accessed 15 October 2022).

³³ Maldives’ Rejoinder, para. 5(a).

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

3
4 First, the Parties disagree on the application of the methodology in delimiting
5 overlapping entitlements within 200 Miles, having regard to the geographic
6 circumstances of the case. The disagreement centres on the nature of, and effect to
7 be accorded to, Blenheim Reef in the delimitation process: should basepoints for the
8 construction of the provisional equidistance line be located on Blenheim Reef either,
9 or both, as a low-tide elevation under article 13 or as a drying reef within the
10 meaning of article 47 of the Convention? We say yes, under both articles, and that to
11 give Blenheim Reef full effect, as the law plainly requires, does not result in, as
12 Maldives claims, “an extraordinarily disproportionate effect”.³⁴

13
14 In addressing these points, Mr Parkhomenko and I will rebut Maldives’ arguments
15 that Blenheim Reef, one, is not part of the relevant coast of Mauritius; and, two, that
16 it is not an appropriate location for basepoints.

17
18 The second disagreement between the Parties – which is related to the first – is on
19 the legal effect to be given to the proven fact that there are extensive areas of
20 “drying reef” at Blenheim, as established by the survey. In its Reply, Mauritius set out
21 in detail the legal consequences of this fact, as required by Part IV of the
22 Convention.³⁵ It is notable that in its Rejoinder, Maldives has offered no evidence of
23 its own to counter the evidence we presented in the Reply. It is equally notable that
24 Maldives has rather failed to address all the submissions we made on Part IV of the
25 Convention, including in particular the interpretation and application of article 47 and
26 the relevance of drying reefs for archipelagic coastal States. It offered just 13 cursory
27 paragraphs.³⁶

28
29 Third, the Parties disagree with respect to the scope of the Special Chamber’s
30 jurisdiction to delimit the continental shelf beyond 200 Miles. Mauritius submits that it
31 has established that both Parties have an extended continental shelf beyond
32 200 Miles from their respective coasts; that the Parties’ entitlements in this area
33 overlap; and that there is no reason for the Tribunal to decline to exercise jurisdiction
34 over this or any other part of Mauritius’ claim. Maldives, on the other hand, argues
35 that the Special Chamber does not have jurisdiction to delimit the continental shelves
36 beyond 200 Miles because there was, allegedly, no dispute in respect of overlapping
37 extended continental shelf claims when Mauritius filed its claim. It also argues that
38 Mauritius’ claim is inadmissible because it has only submitted preliminary
39 information, not a full submission, to the CLCS, and, allegedly this was submitted
40 after the expiration of the time limit for doing so. Professor Klein will address these
41 arguments on jurisdiction and admissibility this afternoon, including the argument
42 that Mauritius is somehow attempting to “significantly expand” the dispute between
43 the Parties “by making an entirely new claim to an OCS.”³⁷ Professor Klein will
44 establish that there is no reason for the Tribunal to limit its jurisdiction to the
45 delimitation of the Parties’ maritime boundary within 200 Miles.

34 Maldives’ Counter-Memorial, para. 152.

35 Mauritius’ Reply, para. 2.20 *et seq.*

36 Maldives’ Rejoinder, paras. 55-67.

37 Maldives’ Counter-Memorial, para. 6. Also Maldives Rejoinder, para. 6 *et seq.*

1 Fourth and finally, there are two disagreements with respect to the delimitation
2 beyond 200 Miles. Maldives contests Mauritius' entitlement to an extended
3 continental shelf under article 76 of the Convention, arguing that it is "manifestly
4 unfounded".³⁸ Dr Rezah Badal will address you on Mauritius' entitlement under
5 article 76 later today. Maldives also takes issue with the methodology to be adopted
6 in the division of overlapping entitlements beyond 200 Miles pursuant to article 83 of
7 the Convention, requiring an equitable solution, a matter which will be addressed by
8 Mr Andrew Loewenstein.

9
10 Mr President, Members of the Special Chamber, that concludes my presentation.
11 You will have noted, I am sure, that in certain respects the case brought to you by
12 the Parties is a discrete one. It is not, however, without significance or interest. This
13 appears to be the first case in which the delimitation of the maritime boundary
14 between two archipelagic States has been brought to any international court or
15 tribunal. In addressing this aspect of the case, the Special Chamber and ITLOS have
16 a significant role to play in confirming the correct interpretation and application of
17 Part IV of the Convention. In so doing, the Special Chamber will cement the place of
18 the Tribunal in playing a leading role in the life of the Convention, and in upholding
19 the rule of law and in fully resolving the dispute that exists between these two
20 friendly neighbouring countries.

21
22 I thank you, Mr President, Members of the Tribunal, for your kind attention and now
23 ask that you invite Mr Parkhomenko to address you on the delimitation of the
24 maritime boundary up to 200 Miles.

25
26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Sands. I now give
27 the floor to Mr Yuri Parkhomenko to make his statement.

28
29 **MR PARKHOMENKO:** Mr President, Members of the Special Chamber, it is an
30 honour and a privilege for me to appear before you today and to do so on behalf of
31 the Republic of Mauritius. My pleasure, however, is tempered by the fact that my
32 mentor Mr Reichler cannot appear before you today, but he looks forward to
33 appearing before you at the next opportunity.

34
35 As Professor Sands has shown, Blenheim Reef is both a low-tide elevation under
36 article 13 of UNCLOS and a drying reef under article 47. As such, Blenheim Reef
37 must be treated as part of Mauritius' relevant coast for purposes of this delimitation,
38 and under both articles must be used in constructing a provisional equidistance line
39 in the first stage of the three-stage delimitation process, as defined by the ICJ in the
40 *Black Sea* case, adopted by ITLOS in *Bangladesh/Myanmar*, and followed by this
41 Tribunal ever since.³⁹ The Parties agree that the delimitation of the maritime
42 boundary within 200 Miles is to be carried following the three-stage process.⁴⁰

43
44 The main point of difference between the Parties is whether Blenheim Reef is to be
45 considered part of Mauritius' coast and given effect in constructing the provisional

³⁸ Maldives' Counter-Memorial, para. 55(b)(ii), para. 79 *et seq*; Maldives' Rejoinder, Chapter 2.

³⁹ See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, paras. 116-122; *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment (14 March 2012), para. 240.

⁴⁰ Counter-Memorial of the Republic of Maldives, para. 113.

1 equidistance line during the first stage of the process. Mauritius insists that, under
2 the applicable law, Blenheim Reef is an integral part of its relevant coast, and that it
3 must be taken into account in constructing the provisional equidistance line.
4 Maldives argues the opposite, that Blenheim Reef must be disregarded in
5 constructing an equidistance line, even at the first stage of the three-stage
6 delimitation process.

7
8 So, in this presentation, I will focus on stage one, and demonstrate why, for both
9 geographical and legal reasons, Blenheim Reef must be taken into account in
10 constructing the provisional equidistance line.

11
12 Following my presentation, Professor Sands will explain why the same provisional
13 equidistance line results if, instead of treating Blenheim Reef as a low-tide elevation
14 under article 13, it is considered a drying reef under article 47 and part of Mauritius'
15 lawfully adopted and internationally recognized archipelagic baselines, from which
16 the same basepoints are generated. On either approach, Blenheim Reef must be
17 taken into account in constructing the provisional equidistance line in stage one of
18 the three-stage process. After I and Professor Sands have addressed stage one,
19 Mr Reichhold will take you through stages two and three of the three-stage process,
20 and show you that the equidistance line produced at stage one, under both of our
21 approaches, constitutes the equitable solution that UNCLOS and the case law,
22 including ITLOS's own cases, require, and that the Special Chamber in this case
23 should adopt as the boundary within 200 Miles.

24
25 In stage one, we begin by confirming that Blenheim Reef is a low-tide elevation
26 located within 12 Miles of Mauritius' coast. The relevant geographical facts are
27 indisputable: (1) Blenheim Reef is a low-tide elevation, and (2) it is situated within
28 12 Miles of Mauritius' territorial sea.

29
30 The geographic and cartographic evidence leave no doubt about either point. First,
31 they show that, in fact and in law, Blenheim Reef is a low-tide elevation. To quote
32 article 13, it is "a naturally formed area of land which is surrounded by and above
33 water at low tide but submerged at high tide."⁴¹ This is reflected in the official nautical
34 charts of various States, including the official charts of the United Kingdom, the
35 United States, India and Russia. They all depict Blenheim Reef as a low-tide
36 elevation, a single mass of submerged land, some of which above water at low tide.

37
38 On your screens you see the depiction of Blenheim Reef on BA chart 727, published
39 in 2004 and updated in 2017, as presented in Figure 2.5 of Mauritius' Memorial.
40 Maldives accepts the accuracy of this chart.⁴²

41
42 The hydrographic evidence shows that Blenheim Reef is shaped like the rim of a
43 volcanic mountain rising from the sea floor. The rim is extensive, with a perimeter
44 exceeding 27 kilometers, much of which is above water, sea level, except at high
45 tide. The exposed rim surrounds a large lagoon, comprising more than 36 square
46 kilometers, and punctuated by coral reefs, some of which are also exposed at low
47 tide, as shown on this extract from BA 727. You can also see the size and shape of

⁴¹ United Nations Convention on the Law of the Sea 1982, article 13(1).

⁴² See Counter-Memorial of the Republic of Maldives, para. 128 and p. 71, table 2.

1 Blenheim Reef, including its enclosed lagoon, on the satellite image now on your
2 screens. It is a sizeable feature, extending for 9.6 kilometers from south to north, and
3 4.7 kilometers from west to east, with extensive portions above water at low tide.

4
5 The undisputed evidence further establishes that part of Blenheim Reef is situated
6 within 12 Miles of the territorial sea of Takamaka Island, which is indisputably part of
7 Mauritius' relevant coast for delimiting the maritime boundary with Maldives. As you
8 can see from this excerpt of BA 727, the distance between Takamaka Island and the
9 south-western part of Blenheim Reef is approximately 10.6 Miles. Thus, more than a
10 Mile of the reef is located within Mauritius' territorial sea. This is not challenged in
11 Maldives' Counter-Memorial. It follows, in accordance with article 13, that Blenheim
12 Reef is a low-tide elevation which "may be used as the baseline for measuring the
13 breadth of the territorial sea."⁴³

14
15 Article 5 of the Convention tells us how to determine the precise location of that
16 baseline.

17
18 Except where otherwise provided in this Convention, the normal baseline for
19 measuring the breadth of the territorial sea is the low-water line along the coast as
20 marked on large-scale charts officially recognized by the coastal State.⁴⁴

21
22 The large-scale chart that Mauritius has long officially recognized for this part of the
23 Chagos Archipelago is the one you have just seen, BA 727.

24
25 Here, you can see more clearly, in red, the low-water line on Blenheim Reef's
26 northern coast, which directly faces Maldives and the area to be delimited. And you
27 can also see the rest of Mauritius' relevant coast, on the north-facing coasts of Peros
28 Banhos Atoll and Salomon Islands Atoll.

29
30 Maldives accepts this depiction of Mauritius' relevant coast, with one exception. It
31 wishes to exclude Blenheim Reef from Mauritius' relevant coast by arguing that only
32 land territory, including islands, may comprise a State's relevant coast but never a
33 low-tide elevation.⁴⁵ There is no support for this, not in UNCLOS or in the case law.
34 In fact, the case law expressly rejects Maldives' theory. Ironically, the leading case is
35 the one they cite, albeit for other purposes: *Qatar v. Bahrain*. In a passage that
36 Maldives avoided, the judgment confirms that a low-tide elevation, situated wholly or
37 partly within a State's territorial sea "forms part of the coastal configuration"⁴⁶ of that
38 State. The Court explained that

39
40 the question whether low-tide elevations are territory and can be appropriated
41 [is distinct from] the question whether low-tide elevations are or are not part of
42 the geographical configuration and as such may determine the legal coastline.
43 *The relevant rules of the law of the sea explicitly attribute to them that function*
44 *when they are within a State's territorial sea.*⁴⁷

⁴³ United Nations Convention for the Law of the Sea 1982, art. 13(1).

⁴⁴ *Ibid.*, art. 5.

⁴⁵ Counter-Memorial of the Republic of Maldives, paras. 127-130; Rejoinder of the Republic of Maldives, paras. 30, 35, 39, 43.

⁴⁶ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, para. 202.

⁴⁷ *Ibid.*, para. 204, emphasis added.

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

4
5 Once the Parties' relevant coasts are identified, the next step, as the ICJ held in the
6 *Black Sea* case, is for the equidistance line

7
8 to be constructed from the most appropriate points on the coasts of the two
9 States concerned, with particular attention being paid to those *protuberant*
10 *coastal points situated nearest to the area to [be] delimited*.⁴⁸

11
12 In *Peru v. Chile*, the Court explained that, following this rule, the

13
14 base points for the construction of the provisional equidistance line have been
15 selected as the most seaward coastal points "situated nearest to the area to
16 be delimited".⁴⁹

17
18 For Mauritius, it is indisputable that, objectively, and as a matter of coastal
19 geography, its "most seaward coastal points 'situated nearest to the area to be
20 delimited'" include the coastal points on the low-water line of Blenheim Reef.

21
22 The drawing of the equidistance line is not a work of art. It is, as you know, a matter
23 of science. This is an "objective" exercise which should "require no subjectivity or
24 discretion at all".⁵⁰ As the ICJ explained in the *Black Sea* case, "the line is plotted on
25 strictly geometrical criteria on the basis of objective data."⁵¹

26
27 The established method for plotting the provisional equidistance line on strictly
28 geometrical criteria and objective data is by using CARIS software. This software
29 identifies basepoints along each Party's relevant coast and mathematically
30 constructs from them the equidistance line.

31
32 As you can see in this, the software identified 13 basepoints along Mauritius'
33 relevant coast. These include three basepoints on Île Diamant, six on Île de la Passe
34 and four basepoints, numbers 10 through 13, at Blenheim Reef, which are magnified
35 in the inset on the right side of this slide. Along Maldives' coast, the software
36 identified 39 basepoints that control an equidistance line within 200 Miles, and
37 Mauritius does not challenge them.

38
39 Taking account of basepoints identified by CARIS software, this is the equidistance
40 line that objective application of the software produces. In Mauritius' view, this is the
41 provisional equidistance line for stage one, objectively and mathematically
42 constructed.

43

⁴⁸ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 117.

⁴⁹ *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 3, para. 185.

⁵⁰ Stephen Fietta & Robin Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (OUP 2016), p. 576.

⁵¹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 118.

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

3
4 Maldives offers three arguments to disregard the basepoints at Blenheim Reef. None
5 is defensible in geography. None has support in the Convention or the case law.
6 There is no justification for disregarding Blenheim Reef in constructing the
7 provisional equidistance line. Let us recall the ICJ's injunction in the *Black Sea* case
8 that:

9
10 [a]t this initial stage of the construction of the provisional equidistance line the
11 Court is not yet concerned with any relevant circumstances that may obtain
12 and the line is plotted on strictly geometrical criteria on the basis of objective
13 data.⁵²

14
15 ITLOS confirmed this in *Bangladesh v. Myanmar*, holding that:

16
17 [a]t this stage, the judge pays no heed to any relevant circumstances and the
18 line is drawn in accordance with strictly geometric criteria on the basis of
19 objective data.⁵³

20
21 Indeed, as far back as 1993, Professor Bowett observed, based on his study of the
22 jurisprudence and State practice, that the objective data upon which the equidistance
23 line is drawn, on the basis of geometric criteria, include low-tide elevations that form
24 an integral part of a State's coast:

25
26 As regards their use simply as base points, islands have no special status,
27 and they need to be considered *together* with rocks, reefs and low-tide
28 elevations. In general, all of these features will be valid for use as basepoints,
29 in conjunction with the equidistance method, where they can be regarded as
30 forming an integral part of the coast.⁵⁴

31
32 That description includes Blenheim Reef, because it is, under articles 13 and 5 the
33 Convention, indisputably an integral part of Mauritius' coast.

34
35 Maldives' first argument for excluding Blenheim Reef is that it is not *wholly* within
36 12 M of any Mauritian mainland or island territory.⁵⁵

37
38 This argument conflicts with the Convention. Article 13 makes this clear:

39
40 Where a low-tide elevation is situated wholly or partly at a distance not
41 exceeding the breadth of the territorial sea from the mainland or an island, the
42 low-water line on that elevation may be used as the baseline for measuring
43 the breadth of the territorial sea.⁵⁶

44
45 "Wholly or partly" means what it says.

⁵² *Ibid.*

⁵³ *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment (14 March 2012)*, para. 92.

⁵⁴ D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J. I. Charney and L. M. Alexander (eds.), *International Maritime Boundaries, Vol. I* (1993), p. 151.

⁵⁵ Rejoinder of the Republic of Maldives, para. 64.

⁵⁶ United Nations Convention on the Law of the Sea 1982, art. 13(1), emphasis added.

1 Blenheim Reef is partly situated within 12 Miles of Takamaka Island. Therefore,
2 basepoints may be placed on the low-water line on this elevation, which abuts the
3 delimitation area, even if part of this feature is located beyond 12 Miles from that
4 island. Article 13 thus defeats Maldives' first argument.
5

6 This also answers the Tribunal's question 3, part 2 whether article 13, paragraph 1,
7 second sentence, permits the use of basepoints on Blenheim Reef that are beyond
8 12 Miles from Takamaka Island. The answer is: "Yes." Article 13 tells us "the low-
9 water line on that elevation may be used as the baseline for measuring the breadth
10 of the territorial sea," and article 5 tells us that baseline "is the low-water line along
11 the coast". There is nothing in either article, or the rest of the Convention, or the case
12 law, that limits the placement of coastal basepoints to parts of the coast that are
13 within 12 Miles of another feature, in this case, Takamaka Island. It would be
14 especially inappropriate to invent such a rule for this case, where Blenheim Reef is a
15 single consolidated feature, parts of which expose at low tide. There is no
16 justification, in law or geography, for treating as its coastline, or placing basepoints
17 only on, exposed patches within 12 Miles of Takamaka Island, when these patches
18 lie far away and do not face the area to be delimited, and appear and disappear
19 depending on the tides.
20

21 And this brings me to Maldives' second argument, namely that "Blenheim Reef is not
22 a single LTE [but] comprises 57 LTEs, with large gaps between some of them."⁵⁷
23 This argument is even more far-fetched and only appeared in the Rejoinder. So this
24 is the first opportunity for us to address it.
25

26 Maldives offers absolutely no scientific or technical evidence to support this rather
27 stunning assertion. No hydrographer, geographer or cartographer or other technical
28 expert is offered to endorse it. Strangely, the only reference identified by Maldives for
29 its contention is the geodetic survey conducted by Mauritius during its visit to
30 Blenheim Reef in February 2022, which is annexed to its Reply.⁵⁸ But that survey
31 provides no support whatsoever for Maldives' argument. To the contrary, it makes
32 clear that Blenheim Reef is a single feature, parts of which are exposed at low tide.
33

34 Maldives does not explain how it determined, from this survey, that Blenheim Reef is
35 57 separate maritime features. The best we can discern is that they took from
36 Mauritius' report this map, drawn from satellite imagery, which identified the parts of
37 Blenheim Reef above water when the image was taken, and then determined that
38 there were 57 locations to be treated as separate low-tide elevations.
39

40 This conclusion is unscientific and unsupportable, as a matter of geography,
41 hydrography and cartography. There is equally no legal support in UNCLOS or the
42 case law for the claim that each drying patch on a low-tide elevation is to be treated
43 as a separate maritime feature.
44

45 Maybe on Thursday Maldives will explain this approach, after which we can respond.
46 In the meantime, let me make a number of points. First, nautical charts of Blenheim
47 Reef depict it as a single, consolidated maritime feature. You have already seen this

⁵⁷ Rejoinder of the Republic of Maldives, para. 64.

⁵⁸ Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022 (Reply of the Republic of Mauritius, Vol. III, Annex 1).

1 on BA 727, which serves as Mauritius' official large-scale chart. Here is an earlier BA
2 chart, 003, from 1998, updated in 2017.⁵⁹ This is Blenheim Reef as depicted on
3 India's Hydrographic Office Chart 269, from 2005, again, as a single, consolidated
4 maritime feature.⁶⁰ Russia, too, has depicted Blenheim Reef in the same manner, on
5 chart 41286, from 1964, corrected in 2017.⁶¹ Here is the United States' NIMA chart
6 61610, last updated in 1997. It, too, shows Blenheim Reef as a single low-tide
7 elevation.⁶²

8
9 Blenheim Reef's status as a single maritime feature, is further confirmed by satellite
10 imagery, including, as shown on your screens, these images taken in January, April
11 and December of 2021.

12
13 As would be expected, the reef's height above the sea floor is not uniform all around
14 the perimeter. Therefore, at different tide levels, different parts of the reef are
15 exposed. The photographic depiction of 57 separate maritime features is merely the
16 number of exposed parts of the same feature at a particular point in time. It is
17 meaningless. Another photograph taken an hour later might show a different
18 number, less or more. And the photograph relied on by Maldives was not taken at
19 lowest astronomical tide, at which point five or six uncovered areas separated by
20 water on this photograph, or 10 or 20, might be seen as connected to one another.

21
22 Mr President, the number of maritime features at Blenheim Reef does not change by
23 the hour, depending on rising or falling tides. What changes with the tides is the
24 extent of the single feature that is uncovered at a particular moment in time. At all
25 times, in our submission, Blenheim Reef is a single low-tide elevation. We do not see
26 how this Special Chamber could adopt a rule that the number of low-tide elevations
27 under the State's jurisdiction at a single location may change by the hour, increasing
28 or decreasing with the tides.

29
30 This is certainly not the approach that the distinguished Annex VII tribunal took in the
31 *South China Sea*. For example, it described Second Thomas Shoal as "a low-tide
32 elevation" even though it had multiple "rocks that are almost certain to be visible at
33 low water".⁶³ Likewise, the Tribunal characterized Mischief Reef as "a low-tide
34 elevation", with "drying rocks" and "rocks exposed during half-tide."⁶⁴ Each of these
35 features was thus regarded as a single low-tide elevation, no matter how many parts
36 were exposed at a given time.

37
38 Mr President, I thank you for your patience. This would be a good opportunity to take
39 a break and after the break I will address the third argument advanced by Maldives
40 with respect to Blenheim Reef.

41
42 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Parkhomenko. We
43 have reached 11.30 so we will take a break for half an hour. Thank you.

⁵⁹ British Admiralty Chart 003 (published 5 March 1998, updated 10 August 2017).

⁶⁰ Indian Hydrographic Office Chart 269 (30 September 1992, updated 2015).

⁶¹ Russian Nautical Chart 41286 (published 12 December 1964, updated 24 June 2017).

⁶² NIMA Chart 61610 (7th Edition, 20 September 1997).

⁶³ *The South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award (12 July 2016), paras. 379-381, emphasis added.

⁶⁴ *Ibid.*, paras. 377-378, emphasis added.

1 (Break)

2
3 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to
4 Mr Parkhomenko to continue his statement. You have the floor, Sir.

5
6 **MR PARKHOMENKO:** I now turn to Maldives' third argument. The Maldives'
7 argument for disregarding basepoints at Blenheim Reef is the blanket assertion that,
8 as a matter of law, low-tide elevations can never be taken into account in delimiting a
9 maritime boundary. In their words: "The relevant jurisprudence consistently rejects
10 LTEs as locations for basepoints."

11
12 Here again, I am afraid, Maldives has failed to support their argument. First, there is
13 nothing in UNCLOS or case law requiring international courts and tribunals, in all
14 cases, to disregard low-tide elevations in constructing a provisional equidistance line.

15
16 Nor, to be fair, is there an absolute rule that requires courts or tribunals to take low-
17 tide elevations into account in every maritime delimitation. Rather, as the case law
18 makes clear, it all depends on the geographic circumstances of a particular case,
19 and whether giving effect to a low-tide elevation in those circumstances contributes
20 to, or detracts from, the equitable solution that international law requires.

21
22 Maldives relies on three cases – two ICJ judgments and one Annex VII arbitral
23 tribunal – to prop up its argument that, regardless of the geographic circumstances,
24 a low-tide elevation may never be taken into account in drawing a maritime
25 boundary. However, none of those cases supports their assertion. None of those
26 cases refers to, or even suggests, the existence of such a rule. To the contrary, in
27 every case the treatment given to particular low-tide elevations, or similar maritime
28 features, depended on the specific geographical circumstances in that case, and
29 whether giving effect to the maritime feature contributed to, or detracted from, the
30 achievement of an equitable solution.

31
32 We begin with *Qatar v. Bahrain*. In that case, the ICJ was called upon to delimit the
33 territorial sea boundary in a geographic context involving certain low-tide elevations
34 within 12 Miles of both States. The unique situation here, as shown on this map, was
35 that these LTEs, Fasht ad Dibal and Fasht al Azm, were situated precisely in the
36 area where the territorial seas of Qatar and Bahrain overlapped. This is shown by
37 the dotted red lines representing the 12-Mile limit from Qatar on the left and the
38 12-Mile limit from Bahrain on the right.

39
40 As the Court explained:

41
42 When a low-tide elevation is situated in the overlapping area of the territorial
43 sea of two States, whether with opposite or with adjacent coasts, both States
44 in principle are entitled to use its low-water line for the measuring of the
45 breadth of their territorial sea. The same low-tide elevation then forms part of
46 the coastal configuration of the two States.

47
48 But, in the unique circumstances of this case,

49
50 there is no ground for recognizing the right of Bahrain to use as a baseline the
51 low-water line of those low-tide elevations which are situated in the zone of

1 overlapping claims, or for recognizing Qatar as having such a right.
2 [Accordingly], for the purposes of drawing the equidistance line, such low-tide
3 elevations must be disregarded.
4

5 As the Court further explained:

6
7 For delimitation purposes the competing rights derived by both coastal States
8 from the relevant provisions of the law of the sea would by necessity seem to
9 neutralize each other.
10

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

21
22 Nor can Maldives derive any support from *Bangladesh v. India*. Maldives attempts to
23 make much of the fact that the Annex VII tribunal chose to disregard a feature within
24 12 Miles of both States' coastlines that Bangladesh called "South Talpatty" and India
25 called "New Moore." But this is easy to explain. During the Tribunal's site visit to the
26 area, it could not find at this location any feature above water, even at low tide.
27

28 As the Tribunal explained in its award, "it was not apparent whether the feature was
29 permanently submerged or constituted a low-tide elevation." In these geographic
30 circumstances, the Tribunal sensibly decided, for delimitation purposes, that "[i]f
31 alternative base points situated on the coastline of the parties are available, they
32 should be preferred to base points located on low-tide elevations". In other words, it
33 is possible, depending on the circumstances, to place basepoints on an LTE.
34

35 There is thus nothing in this award to assist Maldives. The geographic circumstances
36 are entirely different. Blenheim Reef exists and under articles 13 and 47 of the
37 Convention can be used as a place for basepoints. The reasons the Annex VII
38 Tribunal gave for not putting basepoints on South Talpatty/New Moore are not
39 present here. There is thus no need to prefer any "alternative" basepoints elsewhere
40 along Mauritius' coast.
41

42 I turn now to *Somalia v. Kenya*, the third and final case that Maldives invoked in
43 support of its argument that, as a matter of international law, low-tide elevations must
44 never be given basepoints in maritime delimitation. Like the other two cases,
45 *Somalia v. Kenya* does not support this argument.
46

47 There is nothing in this case that says or suggests that basepoints may not be
48 placed on low-tide elevations for delimitation purposes. The general rule, articulated
49 by the Court, is that
50

1 delimitation methodology is based on the geography of the coasts of the two
2 States concerned, and that a median or equidistance line is constructed using
3 base points appropriate to that geography.
4

5 Basepoints on small maritime features – not only low-tide elevations but also
6 islands – may be deemed appropriate or inappropriate, depending on whether or not
7 they have a “disproportionate effect” on the construction of the equidistance line to
8 the prejudice of one of the Parties.
9

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

13
14 the equitableness of an equidistance line depends on whether the precaution
15 is taken of eliminating the disproportionate effect of certain “islets, rocks and
16 minor coastal projections.”
17

18 These were the principles that guided the Court in *Somalia v. Kenya*, as is further
19 evident from these passages in the judgment:
20

21 The first two base points that Somalia proposes on its side of the land
22 boundary terminus are located on the Diua Damasciaca islets. They have a
23 significant effect on the course of the median line in the territorial sea, pushing
24 it to the south. Somalia’s third base point, off the southern tip of Ras
25 Kaambooni, also has the effect of significantly pushing the course of the
26 median line to the south. The placement of base points on the tiny maritime
27 features described above has an effect on the course of the median line that
28 is disproportionate to their size and significance to the overall coastal
29 geography.
30

31 Accordingly:

32
33 In the circumstances of the present case, the Court ... does not consider it
34 appropriate to place base points on the tiny arid Diua Damasciaca islets, which
35 would have a disproportionate impact on the course of the median line in
36 comparison to the size of these features. For similar reasons, the Court does
37 not consider it appropriate to select a base point on a low-tide elevation off the
38 southern tip of Ras Kaambooni.
39

40 Two conclusions can be drawn for purposes of the present proceedings. First, there
41 is no special rule for low-tide elevations. Just as Professor Bowett wrote, they are to
42 be treated no differently than “islets, rocks and minor coastal projections.” Second,
43 the appropriateness of using basepoints for delimitation purposes on such features
44 will depend on whether, in the geographic circumstances of a particular case, the
45 basepoints will have a disproportionate effect, relative to their size and significance,
46 on the construction of the equidistance line, rendering the delimitation inequitable to
47 the other party. Conversely, when the effect of the basepoints is neither
48 disproportionate nor inequitable, there is no reason not to use them for delimitation
49 purposes.
50

51 The justification for the Court’s distinction in *Somalia v. Kenya* between small
52 maritime features that have a prejudicial effect and those that do not is apparent

1 from this chart. Here, you can see that the features discounted by the Court,
2 especially the small Somali islands, would have deflected the equidistance line to the
3 south by as much as 52 degrees, causing it to run almost parallel to Kenya's coast,
4 thus causing a cut-off effect and distributing a disproportionate share of the territorial
5 sea to Somalia. It is also important to appreciate that this case, like *Bangladesh v.*
6 *India*, was between two adjacent States, where small coastal features close to the
7 land boundary terminus are more likely to have a pronounced effect on the course of
8 the equidistance line. The disproportionate effects of such features, as between
9 adjacent States, was demonstrated as far back as the North Sea cases, in this
10 familiar diagram by Professor Jaenicke of Germany.

11
12 The diagram shows the effects of a small coastal headland on the equidistance line
13 between two adjacent States. We have highlighted in blue the equidistance line
14 drawn by Professor Jaenicke in the absence of this feature. The various dashed
15 lines show how State A's headland, depending on its size, can affect the
16 equidistance line and cause the corresponding prejudice to adjacent State B.

17
18 The same effects of small coastal features on delimitation between adjacent States
19 in the territorial sea are more easily discernible here. State A's small coastal feature
20 could be a headland, as depicted by Professor Jaenicke, or a rock or small island, or
21 a low-tide elevation, as depicted here. In all cases, the effect would be the same: to
22 push the equidistance line significantly across the coastal front of adjacent State B,
23 to that State's prejudice.

24
25 But note how different the effect is when State A and State B are opposite one
26 another rather than adjacent. To be sure, State A's low-tide elevation (or islet or
27 headland) would have an effect on the equidistance line, but it is an extremely
28 modest one, and not out of proportion to the significance of the feature causing this
29 effect. This chart, as you will now see, closely resembles the geographic situation
30 between Mauritius and Maldives.

31
32 This map shows the actual impact of Blenheim Reef on the equidistance line
33 between Mauritius and Maldives. What it shows is that Blenheim Reef does not even
34 begin to affect the equidistance line until a point that is 145 Miles from the Parties'
35 coasts. Even then, its impact is not felt on the entire equidistance line but only a
36 segment of it; and along that segment, it pushes the line slightly to the north by no
37 more than 11 Miles at its maximum reach, adding to Mauritius' side of the boundary
38 only about 4,690 square kilometres, which is less than 5 per cent of the entire area
39 to be delimited. There is no cut-off of Maldives' maritime projections. There is no
40 inequity to Maldives. As you will see later, when Mr Reichhold comes to the podium
41 to address stages two and three, the equidistance line that results from taking
42 Blenheim Reef into account equitably distributes the overlapping area between
43 Mauritius and Maldives and easily passes the disproportionality test. In fact, the
44 delimitation is almost perfectly proportionate.

45
46 Before we get to stages two and three, however, I would like to respond to Maldives'
47 assertion that there is no case "in which a provisional equidistance line in respect of
48 overlapping EEZ and continental shelf claims has been drawn by situating a
49 basepoint on an LTE." In fact, there is such a case, and it is cited in Maldives'
50 Rejoinder.

1 This is the *Violations* case between Nicaragua and Colombia that the ICJ decided
2 last April. This case was mainly about Nicaragua’s claims that Colombia had violated
3 its sovereign rights in its EEZ and continental shelf, as declared by the Court in its
4 2012 judgment in the *Territorial and Maritime Dispute* case. In the *Violations* case,
5 the Court sustained Nicaragua’s claims in all respects. The part of the case that
6 Maldives mentions concerns Colombia’s counterclaim challenging the lawfulness of
7 Nicaragua’s straight baselines.

8
9 On this issue, the Court ruled for Colombia, rejecting Nicaragua’s contention that it
10 could place a basepoint on Edinburgh Reef for purposes of its straight baseline
11 claim. Maldives quotes this portion of the Court’s judgment:

12
13 [T]he issue of determining the baseline for the purpose of measuring the
14 breadth of the continental shelf and the exclusive economic zone and the issue
15 of identifying base points for drawing an equidistance/median line for the
16 purpose of delimiting the continental shelf and the exclusive economic zone
17 between adjacent/opposite States are two different issues.⁶⁵

18
19 To which we respond: “Exactly.” This is, indeed, the teaching of the *Violations* case.
20 In that case, as Maldives told you, the Court would not allow Nicaragua to place a
21 basepoint on Edinburgh Reef for purposes of its straight baseline claim because
22 Nicaragua had not proved that the feature was above water at high tide. But what
23 Maldives did not tell you is that, in its 2012 judgment, the Court placed a basepoint
24 on the same low-tide elevation for delimitation purposes and used it to construct the
25 provisional equidistance line between Nicaragua and Colombia.

26
27 Here is the Court’s own map from its 2012 judgment showing the basepoints –
28 including on Edinburgh Reef – that it used in constructing the provisional
29 equidistance line. The Court recalled this in the *Violations* case:

30
31 [I]n plotting a provisional equidistance line, the 2012 Judgment refers to
32 “Edinburgh Reef” as part of the islands located off the coast of Nicaragua and
33 that ... *the Court placed a base point on this feature for the construction of the*
34 *provisional equidistance line.*⁶⁶

35
36 This was conspicuously omitted from the Maldives’ discussion of the *Violations* case.
37 I should add that, in the second stage of the three-stage process, the Court
38 continued to treat Edinburgh Reef as an appropriate Nicaraguan basepoint and gave
39 it and Nicaragua’s other bases points considerably more weight than Colombia’s
40 corresponding basepoints, resulting in a major adjustment of the provisional
41 equidistance line in Nicaragua’s favour.⁶⁷

42
43 Mr President, Members of the Special Chamber, in conclusion, there is no valid
44 reason, in geography or in law, for declining to place basepoints on Blenheim Reef

⁶⁵ Rejoinder of the Republic of Maldives, para. 45, citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment (21 April 2022), para. 250.

⁶⁶ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment (21 April 2022), para. 250, emphasis added.

⁶⁷ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para. 234.

1 based on strictly objective, mathematical criteria, as the CARIS software does, in
2 constructing a provisional equidistance line in stage one of the three-stage process.

3
4 As a matter of law, under articles 13 and 5 of UNCLOS, Blenheim Reef is an integral
5 part of Mauritius' relevant coastline, and it is situated within 10.6 Miles of another
6 integral part of Mauritius' relevant coast, Takamaka Island. There is no valid reason
7 for disregarding or discounting it in the specific geographical circumstances in this
8 case in the first stage of the three-stage process.

9
10 Stage one thus concludes with the drawing of this provisional equidistance line which
11 takes into account all of the basepoints generated by the CARIS software on the
12 relevant coasts of Mauritius and Maldives, including the four basepoints at Blenheim
13 Reef.

14
15 Mr President, Members of the Special Chamber, this concludes my presentation.
16 I thank you for your patient attention and kindly ask you to invite to the podium
17 Professor Sands.

18
19 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Parkhomenko.
20 I now give the floor to Mr Sands. Mr Sands, I inform you in advance that this
21 morning's session will be adjourned around 1.10, at the latest, given the time we
22 spent for introductions. Therefore, if you will not be able to finish your statement
23 within this time, you may, of course, continue your statement this afternoon. You
24 have the floor.

25
26 **PROFESSOR SANDS:** Thank you, Mr President. I am planning to finish by 1.10, but
27 because of the questions that were posed which we only received yesterday at
28 4 p.m., I may ask your indulgence for a couple of minutes to just beyond, but I hope I
29 do not need to do that.

30
31 Mr President, Members of the Special Chamber, following Mr Parkhomenko's
32 presentations I am going to address you on Mauritius' entitlement to maritime spaces
33 within 200 Miles, based on its archipelagic baselines, pursuant to Part IV of the
34 Convention.

35
36 In its Counter-Memorial, Maldives stated that Blenheim Reef is the "central dispute
37 dividing the Parties" in this case.⁶⁸ Of the 52 basepoints proposed by the Parties in
38 the first round of written pleadings, 39 located along the southern coast of Addu Atoll
39 in Maldives and 9 along the northern coastline of the Chagos Archipelago, are fully
40 agreed. Only 4 basepoints are in dispute: Mauritius' points 10, 11, 12 and 13 on the
41 northern fringe of Blenheim Reef.

42
43 Mr Parkhomenko has demonstrated why – having regard to article 13 of the
44 Convention, in conjunction with article 5 – Blenheim Reef as a low-tide elevation is to
45 be treated as part of Mauritius's regular coast, upon which these basepoints may be
46 placed to construct the provisional equidistance line. I am now going to address the
47 second legal basis for the line of delimitation proposed by Mauritius on archipelagic
48 baselines basis in relation to Blenheim Reef, pursuant to Part IV of the Convention.

⁶⁸ Maldives' Counter-Memorial, para. 114.

1 Mauritius' entitlement based on its archipelagic baselines is not a theory in the
2 alternative, as contended by Maldives.⁶⁹ As an archipelagic State, Mauritius has the
3 right to use archipelagic baselines based on Part IV, and for Blenheim Reef – as a
4 “drying reef” – it generates a full entitlement to the delimitation. As I noted earlier,
5 there is a cardinal distinction with regard to the entitlements that may be generated
6 by a low-tide elevation, on the one hand, and an archipelagic “drying reef”, on the
7 other: although every “drying reef” may also be characterized as a low-tide elevation,
8 not every low-tide elevation is a “drying reef” within the meaning of article 47.

9
10 Blenheim Reef falls into the first category: it is both a low-tide elevation for the
11 purposes of article 13 of the Convention and a drying reef within the meaning of
12 article 47. On either approach – article 13 or article 47 – you get to the same
13 equidistance line between Mauritius and Maldives.

14
15 Before turning to Part IV of the Convention and the legal effect of Mauritius'
16 archipelagic baselines, I will just briefly mention two factual disagreements to be
17 addressed.

18
19 First, Maldives argues that the geodetic survey of Blenheim Reef “merely confirms
20 what was already common ground between the Parties – namely that there are LTEs
21 at Blenheim Reef within the meaning of article 13 of UNCLOS.”⁷⁰ Mr Parkhomenko
22 has already fully addressed this matter and explained why Blenheim Reef as an LTE
23 is properly to be treated as a single feature. The same approach allows Mauritius to
24 make full use of archipelagic baselines on the basis of the drying reef, that is
25 Blenheim Reef, a single feature. Under article 47, the salami-slicing approach of the
26 Maldives is simply irrelevant.

27
28 The second factual disagreement concerning Blenheim Reef is Maldives' assertion
29 that the findings of the on-site survey are “irrelevant to the issue regarding
30 basepoints”.⁷¹ Mr President, earlier I explained why the survey was significant in
31 relation to the extent of drying reefs, and I will not repeat myself now.

32
33 In the Memorial, relying on charts produced by the U.S. National Imagery and
34 Mapping Agency (NIMA) and the French Naval Hydrographic and Oceanographic
35 Service (SHOM), Mauritius characterized Blenheim Reef as “a large area of reef
36 drying at low tide”.⁷² Maldives apparently did not agree with this. In its Counter-
37 Memorial it made no submissions on Blenheim Reef as a “drying reef” under Part IV
38 of the Convention. There was no “common ground”. In its Reply it barely addressed
39 the legal issues, and so we will have to wait until Thursday to see what Maldives has
40 to say about these provisions of the Convention.

41
42 Let me turn now to our submissions on Part IV of the Convention. As Mauritius
43 described in its Reply, Part IV creates a distinct and special regime applicable only to
44 “Archipelagic States”.⁷³ The application of Part IV to Blenheim Reef confirms the full

⁶⁹ Maldives' Rejoinder, para. 55.

⁷⁰ Maldives' Rejoinder, para. 19, emphasis added.

⁷¹ Maldives' Rejoinder, para. 5(a).

⁷² Mauritius' Memorial, para. 2.24.

⁷³ Mauritius' Reply, paras. 2.20-2.52.

1 entitlements that this feature generates in the context of delimitation of the Parties'
2 overlapping maritime entitlements.

3
4 Let us begin with a little history. Proposals relating to a “special regime” for
5 archipelagos, for the purpose of delimiting territorial waters, may be traced back to
6 the 1899 meeting of the Institut de Droit International, by coincidence held here in
7 Hamburg.⁷⁴ Further preliminary studies were then carried out in 1924 and 1926 by
8 the International Law Association and by the Institut, in 1927 and 1928, and by the
9 American Institute of International Law, in 1925. There was also active consideration
10 of archipelagos in the territorial sea in preparation for the 1930 Hague Codification
11 Conference. But it was not until the independence of Indonesia and the Philippines
12 that State practice truly began to emerge.⁷⁵

13
14 In 1951, the International Court was called upon by the United Kingdom to rule on
15 the validity under international law of Norwegian baselines purporting to delimit a
16 fisheries zone (that is the *Fisheries* case).⁷⁶ The coastal zone under consideration
17 included the islands, islets, rocks and reefs known as “*skjærgaard*”. The Court noted
18 that Norway and the United Kingdom agreed that “in the case of a low-tide elevation
19 (drying rock) the outer edge at low water of this low-tide elevation may be taken into
20 account as a basepoint for calculating the breadth of the ... sea.”⁷⁷

21
22 Turning to the delimitation of Norwegian territorial waters, the Court identified three
23 methods. As to this second method – it was apparently the first time the ICJ was
24 called upon to address an archipelagic matter – the Court held that where the coast
25 is “bordered by an archipelago such as the ‘*skjærgaard*’ ... the base-line becomes
26 independent of the low-water mark, and can only be determined by means of a
27 geometrical construction.” In these circumstances, the Court continued, “the line of
28 the low-water mark can no longer be put forward as a rule requiring the coastline to
29 be followed in all its sinuosities.”⁷⁸

30
31 The Court held that baselines should “not depart to any appreciable extent from the
32 general direction of the coast” but also that the coastal State “must be allowed the
33 latitude necessary in order to be able to adapt its delimitation to practical needs and
34 local requirements”.⁷⁹

35
36 The Court ultimately concluded that Norway’s method of straight baselines, “imposed
37 by the peculiar geography of the Norwegian coast” was not contrary to international
38 law, even as it stood in 1951 before the adoption of the Convention.⁸⁰

39
40 The principles elucidated by the International Court in the *Fisheries* case have been
41 very significant. They were carried forward to a large extent in the negotiation of

⁷⁴ H.P. Rajan, “The Legal Regime of Archipelagos”, *German Yearbook of International Law*, 29 (1986) p. 137.

⁷⁵ International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 23, available at https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-5 (last accessed 15 October 2022).

⁷⁶ *Fisheries case, Judgment of 18 December 1951, I.C.J. Reports 1951*, p. 116.

⁷⁷ *Ibid.*, p. 128.

⁷⁸ *Ibid.*, pp. 128-129.

⁷⁹ *Ibid.*, p. 133.

⁸⁰ *Ibid.*, p. 139.

1 what became Part IV of UNCLOS. During sessions of the Seabed Committee at the
2 Third United Nations Conference on the Law of the Sea, Mauritius, Fiji, Indonesia
3 and the Philippines introduced two ideas on principles applicable to archipelagic
4 States.

5
6 The first idea took forward the use of straight baselines to connect “the outermost
7 points of the outermost islands and drying reefs of the archipelago from which the
8 extent of the territorial sea of the archipelagic State is or may be determined.”⁸¹

9
10 The second idea, which led to a proposal submitted by the United Kingdom,
11 concerned the “[r]ights and obligations of archipelagic States”, setting out objective
12 criteria to define archipelagic States by reference to, amongst other things, the
13 maximum length of baselines and the “ratio of the area of sea to the area of land
14 territory inside the perimeter”.⁸²

15
16 By 1976 there was agreement on the essence of these two ideas: the legal definition
17 of an archipelagic State, and the right of such a State to construct straight baselines
18 which could then be used for the purposes of determining their maritime
19 entitlements, in relation not only to the territorial sea but, also, the EEZ, and the
20 continental shelf, both up to and beyond 200 Miles. What emerged was a special
21 regime for archipelagos in the Convention; one that related to “mid-ocean
22 archipelagos”, as opposed to archipelagos associated with a continental State.
23 Ultimately, it was these proposals that led to the adoption of Part IV, which are
24 applicable and fully binding to this case.⁸³ That became indisputable after the site
25 visit.

26
27 Part IV of the Convention comprises nine articles, constituting a “distinctive
28 regime”.⁸⁴

29
30 The terms “Archipelagic State” and “archipelago” are defined in the first provision of
31 Part IV, article 46. For the purposes of the Convention, (a) an “archipelagic State”
32 means “a State constituted wholly by one or more archipelagos and may include
33 other islands”, and (b) an “archipelago” means

34
35 a group of islands, including parts of islands, interconnecting waters and other
36 natural features which are so closely interrelated that such islands, waters and
37 other natural features form an intrinsic geographical, economic and political
38 entity, or which historically have been regarded as such.

39
40 Both Mauritius and Maldives have declared themselves to be “archipelagic State[s]”
41 within the meaning of article 46. Mr President, what makes this case so interesting,

⁸¹ UNGA, Official Records: Twenty-Eighth Session, Supplement No. 21 (A/9021), Report of the Committee on the Peaceful uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (1973), Volume V, A/AC.138/SC.II/L.15 of 14 March 1973, available at https://digitallibrary.un.org/record/725198/files/A_9021%28Vol.V%29-EN.pdf (last accessed 15 October 2022).

⁸² *Ibid.*, A/AC.138/SC.II/L.44 of 2 August 1973.

⁸³ International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 24.

⁸⁴ International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 24.

1 indeed unique, is that this is the first time an international court or tribunal has been
2 called upon to delimit the maritime boundary between two archipelagic States. In this
3 way, the Special Chamber is called upon to interpret and apply, for the first time, the
4 provisions of Part IV.

5
6 Part IV applies to all “archipelagic States”, but it does not necessarily apply to all
7 “archipelagos”. The provisions of Part IV only apply to archipelagos falling within the
8 jurisdiction of coastal States which consist entirely of a group of islands. That plainly
9 includes Mauritius. That point is not in dispute.

10
11 On your screen, you can now see article 47, which allows an archipelagic State to
12 draw straight baselines. As you can see, article 47(1) allows Mauritius, as an
13 archipelagic State, to “draw straight archipelagic baselines joining the outermost
14 points of the outermost islands and drying reefs of the archipelago”. Indeed,
15 article 47 is the only place in the Convention in which the words “drying reefs” are to
16 be found, in paragraphs 1 and 7. The February survey confirmed that Blenheim Reef
17 comprises a “drying reef”. Article 47, therefore, allows Mauritius to use the
18 “outermost ... drying reefs” of Blenheim Reef to draw its archipelagic baselines. We
19 can see no basis for a contrary view.

20
21 To be able to draw straight baselines, an “archipelagic State” must meet six criteria
22 arising under article 47. We explained this in our Reply, as you can see at paragraph
23 2.29. These criteria are as follows: the baselines must include the main islands; the
24 ratio of water to land must be no more than 9 to 1; no segment of the line can be
25 more than 125 Miles long; the baselines must not depart “to any appreciable extent
26 from the general configuration of the archipelago”; baselines can be drawn from
27 islands and drying reefs in all circumstances, and from low-tide elevations in limited
28 circumstances; and the baselines must not cut off the territorial sea of any other
29 State.

30
31 Mauritius plainly meets all of these requirements, including in the area around
32 Blenheim Reef. It has declared itself to be an archipelagic State within the meaning
33 of article 46(a). It has given due publicity and deposited charts or lists of coordinates
34 with the UN Secretary-General, as required by article 47(9). It, and the Maldives, are
35 among the 22 Parties to UNCLOS to have done so.⁸⁵ Of these Parties, Mauritius and
36 15 others meet all the requirements of article 47. The Maldives, however, is one of
37 six Parties that do not meet all the requirements of article 47. This is confirmed by a
38 recent report of the ILA, published in 2018.⁸⁶

39
40 For its part, Maldives appears to accept that Mauritius meets all of the requirements
41 for using archipelagic baselines, including the use of “drying reefs” at Blenheim,
42 except for one criterion: the Maldives says that Mauritius has not met the fourth
43 requirement – in accordance with article 47(3) – namely the requirement that the

⁸⁵ Antigua and Barbuda, Bahamas, Cabo Verde, Comoros, Dominican Republic, Fiji, Grenada, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius (with respect to Cargados Carajos and the Chagos Archipelago), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, São Tomé and Príncipe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu.

⁸⁶ See Appendix 3 to International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018).

1 “drawing of such [archipelagic] baselines shall not depart to any appreciable extent
2 from the general configuration of the archipelago.”
3

4 With the greatest respect, our friends from the Maldives are wrong.
5

6 You can now see Mauritius’ archipelagic baselines on your screens. Maldives argues
7 that these baselines do not meet the requirements of article 47(3) because, as
8 paragraph 66 of their Rejoinder puts it, they allegedly “depart to an appreciable
9 extent from the general configuration of the ‘group of islands’ forming the Chagos
10 Archipelago.”⁸⁷
11

12 To make this argument, Maldives has taken the actual language of article 47(3) of
13 the Convention, and then rewritten it by inserting additional words. That provision
14 states, as you can see on the screen, that archipelagic “baselines shall not depart to
15 any appreciable extent from the general configuration of the archipelago”. But
16 Maldives has added extra words to 47(3): it has introduced an additional
17 requirement, a different requirement, namely that the baselines must not depart from
18 the general configuration of the “group of islands” forming part of the archipelago.
19

20 As you will see from the screen, the words “group of islands” do not appear
21 anywhere in article 47(3). They have just been added on by the Maldives. Nor could
22 those words appear: for the purposes of archipelagic baselines, article 47 treats
23 islands and drying reefs as coterminous.
24

25 Mr President, there is no requirement for archipelagic baselines to encompass all the
26 islands of an archipelago. What article 47(1) says is only that the “main islands” may
27 not be excluded. And in Mauritius’ case they have not been excluded. The Chagos
28 Archipelago is made up of more than 60 islands, banks and reefs, with a total area of
29 52.07 square kilometres. Annex 4 to Mauritius’ Reply sets out a table of 56 high-tide
30 features which are depicted on nautical charts available to Mauritius.⁸⁸ All the “main
31 islands” are included within Mauritius’ archipelagic baselines.
32

33 Yet the Maldives argues that Mauritius’ archipelagic baselines do not comply with
34 article 47(3) because of the supposed exclusion of Nelson’s Island, which you can
35 see highlighted in a red circle on your screens, and the Great Chagos Bank. They
36 say we have excluded it and we should have included it.
37

38 Aside from Nelson’s Island, Maldives has not identified any other island in the Great
39 Chagos Bank that does not fall within Mauritius’ archipelagic baselines. Maldives
40 expressly recognizes that Nelson’s Island is “the only high-tide feature of the Great
41 Chagos Bank excluded from Mauritius’ archipelagic baselines.”⁸⁹
42

43 Let us look at Nelson’s Island. It covers an area of just 0.32 square kilometres, or 0.6
44 per cent of the total land area in the Chagos Archipelago. It is not a “main island”.
45 Unlike many of the larger islands in the Chagos Archipelago, there is no record of
46 there ever having been any human habitation on Nelson’s Island.
47

⁸⁷ Maldives’ Rejoinder, para. 66.

⁸⁸ Mauritius’ Reply, Vol. III, Annex 4.

⁸⁹ Maldives’ Rejoinder, para. 66(b).

1 In the Reply, Mauritius provided four concrete examples of recognized archipelagic
2 States that exclude certain islands from their archipelagic baselines, and these are
3 all significantly larger than Nelson’s Island.⁹⁰ You can see these on your screens.
4

5 First, on the top left-hand corner, Kiribati’s archipelagic baselines exclude the island
6 of Nikunau, which is 59 times larger than Nelson’s Island. Second, on the top right,
7 Papua New Guinea’s archipelagic baselines exclude Wuvulu Island, which is
8 45 times larger than Nelson’s Island. Third, bottom left, Seychelles’ archipelagic
9 baselines omit Frégate Island, which is six times larger than Nelson’s Island. Fourth,
10 bottom right, Tuvalu’s archipelagic baselines exclude Vaitupu Island, which is
11 18 times larger than Nelson’s Island.
12

13 In all four of these examples, the U.S. Department of State’s Bureau of Oceans and
14 International Environmental and Scientific Affairs concluded that the archipelagic
15 baselines do “not appear to depart to any appreciable extent from the general
16 configuration of the archipelago.”⁹¹
17

18 You will note that the U.S. Department of State has – unlike Maldives – used the
19 actual language of article 47, not the Maldives’ modified version.
20

21 All of the excluded islands in its studies are significantly larger than Nelson’s Island.
22 And, significantly, in the case of Nikunau Island and Vaitupu Island, they are located
23 much further away from the nearest high-tide feature, departing to a far greater
24 extent from the configuration of the archipelago.
25

26 We put these examples into our Reply. We waited and hoped that Maldives might
27 say something in its Rejoinder about these examples. What did it say? Nothing.
28 Silence. It just accused Mauritius of “gloss[ing] over the specific geographical
29 circumstances of the present case” because Nelson’s Island is said to be “a high-tide
30 feature and is therefore part of the intrinsic entity forming the Chagos Archipelago.”⁹²
31

32 Again – it seems to be a habit – Maldives reads words into the Convention that are
33 simply not there. Where do the words “intrinsic entity” appear in article 47? They do
34 not. The words “intrinsic geographical, economic and political entity”, which seem to
35 have inspired Maldives, do appear but only in article 46(b). The problem for Maldives
36 is that the words in that provision, rather obviously, have no relation whatsoever to
37 the interpretation or application of the six objective criteria set out in article 47, where
38 the words do not appear.
39

40 To draw these threads together, Maldives appears to be the only State to have
41 objected to Mauritius’ archipelagic baselines on the merits. The United Kingdom and
42 United States have issued an objection, but as you will see from it, it is only for
43 political reasons; it is based on the UK’s supposed claim to the Chagos Archipelago,
44 not because the archipelagic baselines do not meet the legal requirements of
45 article 47. Of course, the bases for such political objections are now entirely without
46 force or legal consequence in light of the rulings of the ICJ and this Special

⁹⁰ Mauritius’ Reply, para. 2.41.

⁹¹ Mauritius’ Reply, Vol III, Annex 5, p. 5.

⁹² Maldives’ Rejoinder, para. 66(b).

1 Chamber, rulings which, as you now know, the Maldives has accepted, as the recent
2 exchange of letters makes crystal clear.

3
4 May I add, for completeness, that Maldives' critique of Mauritius' baselines should
5 perhaps be taken with a pinch of sea salt: it has recognized that its own archipelagic
6 baselines require certain "amendments" to become compliant with the requirements
7 of article 47, and that these are "currently under consideration".⁹³

8
9 Mr President, the U.S. State Department and the International Law Association have
10 both affirmed that Mauritius' archipelagic baselines, which enclose Blenheim Reef,
11 do not depart to any appreciable extent from the general configuration of the Chagos
12 Archipelago, and are fully compliant with all of the requirements of article 47 of the
13 Convention and Part IV.⁹⁴ There is quite simply no basis whatsoever upon which it
14 can reasonably be argued that Mauritius' archipelagic baselines do not meet all the
15 requirements of article 47.

16
17 We therefore invite the Special Chamber to rule that Mauritius is an archipelagic
18 State within the meaning of Part IV of the Convention; to rule that its archipelagic
19 baselines meet the requirements of article 47, having been duly reported to the
20 United Nations, and are fully consistent with the Convention; and to rule that the
21 archipelagic baselines are to be given full effect in the delimitation.

22
23 Mr President, I will turn now to the legal effect of Mauritius' archipelagic baselines on
24 this delimitation process. As set out in our Reply, for the purposes of delimitation the
25 distinction between "drying reefs" and low-tide elevations is significant. As a "drying
26 reef" located on a properly drawn archipelagic baseline, Blenheim Reef is to be
27 treated no differently from an "island". That is what article 47(1) says, referring to "the
28 outermost points of the outermost islands and drying reefs". The language makes no
29 distinction whatsoever between "islands" and "drying reefs", for the purpose of
30 drawing the baseline, or for the entitlements that arise from the location of such
31 baselines.

32
33 In short, the baseline derived from an "outermost ... drying reef" has precisely the
34 same entitlement to a full maritime area as does a baseline derived from an
35 "outermost island". Moreover, under article 47(1) – in contrast with article 13 – there
36 is no requirement that the outermost drying reef to be included within the
37 archipelagic baselines be located wholly or partially within 12 Miles of an island or
38 mainland.

39
40 In Mauritius' case, the archipelagic baselines have been correctly drawn around
41 Blenheim Reef, as we set out in our pleadings, and those baselines are entitled to be
42 given the fullest effect for the purpose of maritime delimitation. This is the case in
43 relation to the territorial sea, EEZ and continental shelf, both up to and beyond 200
44 Miles. Nothing in the text of the Convention says otherwise. The full effect to be
45 given to Blenheim Reef is plain from the terms of articles 48 and 49.

46
47 Article 48 makes this crystal clear:

⁹³ Maldives' Counter-Memorial, para. 30.

⁹⁴ Mauritius' Reply, para. 2.42.

1 The breadth of the territorial sea, the contiguous zone, the exclusive economic
2 zone and the continental shelf shall be measured from archipelagic baselines
3 drawn in accordance with article 47.
4

5 Not “may” – “shall”. Article 48 could have said that the breadth of these maritime
6 entitlements would be less if the baseline was drawn from the “outermost drying
7 reef”. But it does not say that.
8

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

11
12 simply extends to archipelagos the very same rule that is generally applicable
13 to coastal States, namely that the breadth of maritime areas is to be measured
14 from lawfully established baselines. It does not conflate baselines for the
15 measurement of the breadth of maritime areas, and base points for
16 delimitation purposes.⁹⁵
17

18 Where is the authority for that proposition? There is none. With great respect, this is
19 gobbledygook, reading words about basepoints into the text of article 48 that do not
20 exist. Article 48 – and Part IV more generally – do not apply “the very same rule”
21 when it comes to archipelagic baselines.
22

23 The provisions of Part IV are plainly distinct from those of Part II on the territorial sea
24 and contiguous zone, or Part V on the EEZ and Part VI on the continental shelf.
25 Those parts do not include any reference to “drying reefs”, or the entitlements which
26 they generate. Nor do those Parts of the Convention, or any of the provisions they
27 contain, purport to displace the plain meaning or effect of article 48.
28

29 Article 49 is equally supportive of Mauritius’ position. The first paragraph states – it
30 could not be clearer:
31

32 The sovereignty of an archipelagic State extends to the waters enclosed by
33 the archipelagic baselines drawn in accordance with article 47, described as
34 archipelagic waters, regardless of their depth or distance from the coast.
35

36 Paragraph 2 extends the sovereignty of the archipelagic States “to the air space over
37 the archipelagic waters, as well as to their bed and subsoil, and the resources
38 contained therein.”
39

40 Maldives dismisses article 49 as “without merit” because “[i]t says nothing about
41 maritime delimitation”.⁹⁶ Again, Maldives doesn’t like what Article 49 says so it
42 chooses to misread it, which is a curious thing to do when you are yourself an
43 archipelagic State which presumably at some point will wish to rely on these
44 provisions.
45

46 Article 49 creates a wholly distinct legal status for archipelagic waters, regardless of
47 their depth or distance from the coast. It extends to the archipelagic State largely the
48 same sovereignty and sovereign rights that it would enjoy in relation to any land

⁹⁵ Maldives’ Rejoinder, para. 60 (footnote omitted).

⁹⁶ Maldives’ Rejoinder, para. 61.

1 territory. So, as an archipelagic State, Mauritius enjoys full sovereignty over all the
2 waters enclosed by its archipelagic baselines drawn in accordance with article 47.

3
4 By Part IV, Mauritius' sovereignty over Blenheim Reef, the appurtenant waters, air
5 space, resources, bed and subsoil of Blenheim Reef are to be treated, as a matter of
6 international law, in a manner that is indistinguishable from the sovereignty it enjoys
7 in relation to an island or any other land territory. The Special Chamber will be
8 familiar with the famous maxim that "the land dominates the sea".⁹⁷ Pursuant to
9 article 49, Blenheim Reef is to be treated, as a matter of law under the Convention,
10 in a manner that is indistinguishable from land. Mauritius enjoys unfettered
11 sovereignty and sovereign rights over those archipelagic areas. And those
12 archipelagic areas have full rights in relation to the breadth of the territorial sea, EEZ
13 and continental shelf. Just like islands, just like land.

14
15 To address this obvious difficulty with its argument, Maldives seeks to distinguish
16 between maritime entitlements and delimitation. To do so, it has invoked but a single
17 authority – *Nicaragua v. Columbia* – to the effect that

18
19 the issue of determining the baseline for the purpose of measuring the breadth
20 of the continental shelf and the exclusive economic zone and the issue of
21 identifying base points for drawing an equidistance/median line for the purpose
22 of delimiting the continental shelf and the exclusive economic zone between
23 adjacent/opposite States are two different issues.⁹⁸

24
25 Mr Parkhomenko has already addressed this and exposed the total fallacy in
26 Maldives' argument. As he showed you, in an earlier case between the same parties,
27 which involved the delimitation of the maritime boundary, the Court gave full weight
28 in the construction of the provisional equidistance line, and in the final boundary line
29 that it adopted, to Edinburgh Reef, a low-tide elevation adjacent to Nicaragua's
30 coast.

31
32 The text quoted by Maldives, entirely out of context, is the Court's explanation of why
33 it gave full weight to Edinburgh Reef for the purposes of maritime delimitation with
34 Colombia, but declined to allow Nicaragua to use it in its newly adopted system of
35 straight baselines to represent its coastline.

36
37 Moreover, the Court in the *Nicaragua v. Colombia* case was not dealing with
38 archipelagic baselines, and was not interpreting or applying Part IV of the
39 Convention. The "physical geography" of the relevant Mauritian coast – the coast of
40 Blenheim Reef – is an extensive "drying reef", as we have shown, and it is one that
41 falls properly within the archipelagic baselines as drawn by Mauritius.

42
43 Article 47 accords particular significance to "drying reefs", for the determination of
44 the entitlement to maritime spaces for archipelagos in Part IV. A basepoint on a
45 "drying reef" used to construct an archipelagic baseline is properly also to be used
46 for the purposes of delimitation. That is what Part IV says. That is what Mauritius has
47 done.

48

⁹⁷ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 96.

⁹⁸ Maldives' Rejoinder, para. 45.

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

8
9 Maldives argues that *Barbados v. Trinidad and Tobago* provides “no support
10 whatsoever” for Mauritius. It offers two reasons.⁹⁹ First, it says that the Annex VII
11 tribunal adopted Trinidad and Tobago's archipelagic basepoints not because they
12 were archipelagic basepoints, but because they were “appropriate for such
13 purposes” independently “from the fact that the coastal State has selected them for
14 drawing its archipelagic baselines.”¹⁰⁰ However, a close reading of the tribunal's
15 judgment makes clear that this is not correct. At paragraph 311 of the arbitral award,
16 the tribunal noted that Trinidad and Tobago requested it to use its archipelagic
17 basepoints to construct an equidistance line. By contrast, Barbados argued that
18 archipelagic basepoints “cannot be used for calculating the equidistance line”.¹⁰¹ At
19 paragraph 2 of the technical report of the tribunal's hydrographer, it was recorded
20 that “the geographic coordinates of the pertinent turning points” adopted by the
21 tribunal are four points “of the Trinidad and Tobago archipelagic baseline system”.¹⁰²
22 You can see these four points, T1 to T4, all located on the archipelagic baselines –
23 on your screens.

24
25 Maldives has not identified anything in the tribunal's award to support its contention
26 that these points were selected for any other reason than that they are located along
27 Trinidad and Tobago's archipelagic baselines.

28
29 The second argument made by the Maldives is that the basepoints you can see on
30 your screens – T1, T2, T3 and T4 – “all were islands, well above water at all
31 times.”¹⁰³ Those are the words used by Maldives. Maldives describes these islands,
32 noting in particular the charted height of each one. A number of responses may be
33 made. First, there is nothing in the award to indicate that the selection of these points
34 was in any way based on the charted heights of the relevant features. In this regard,
35 there is nothing in the Convention – and in particular in Part IV – which imposes any
36 sort of a height requirement. The fact that none of the features at issue in *Barbados*
37 *v. Trinidad and Tobago* were low-tide elevations is simply irrelevant. The Arbitral
38 Tribunal used points that appear to have been “the outermost points of the outermost
39 islands”; if there had been “drying reefs” there located, which it seems there were
40 not, they could just as well have chosen the “outermost points of the outermost ...
41 drying reefs” because, as I have already mentioned, article 47 draws no distinction at
42 all between “islands” and “drying reefs” for the purpose of entitlements or
43 delimitation. The award in that case thus fully supports Mauritius' contention that the

⁹⁹ Maldives' Rejoinder, para. 46.

¹⁰⁰ Maldives' Rejoinder, para. 47.

¹⁰¹ *Barbados v. Trinidad and Tobago, Award, 11 April 2006*, para. 333.

¹⁰² *Barbados v. Trinidad and Tobago*, Technical Report of the Tribunal's Hydrographer, David H. Gray, M.A.Cs., P.Eng., C.LS.

¹⁰³ Maldives' Rejoinder, para. 48.

1 “outermost points of the outermost ... drying reefs” of Blenheim Reef are properly to
2 be used for determining entitlements and delimiting the relevant maritime boundary.

3
4 Mr President, Maldives’ Rejoinder is long on hyperbole and much shorter on
5 analysis. Maldives says that Mauritius’ reliance on its archipelagic baselines for the
6 purposes of delimitation is – surprising words – “wholly without merit”,¹⁰⁴ but then it
7 simply fails to engage at all with Part IV of the Convention, so we are sort of left
8 hanging on the legal effects, or their view on the legal effects, of articles 46, 47, 48
9 and 49, and their interaction with the Convention’s rules on delimitation and their
10 application by the Annex VII tribunal in *Barbados v. Trinidad and Tobago*. Maldives
11 has simply failed to engage with the language or realities of Part IV, and in particular
12 article 47. Part IV does establish, as it says, a special regime, one that is distinct,
13 one that accords a particular role and effect to archipelagic “drying reefs”. Blenheim
14 Reef is not a “remote LTE”, as Maldives argues.¹⁰⁵ It is an integral part of Mauritius’
15 coast, an area over which Mauritius has, under international law, full sovereignty, as
16 though it were an island or a mainland coast. Under article 48, it generates a full
17 entitlement; and so it follows from all of this that, like an island or a mainland coast,
18 and it has an equally full entitlement for the purposes of delimitation.

19
20 It follows from this, that the delimitation is properly to be carried out on the basis of
21 Mauritius’ archipelagic baselines as drawn around Blenheim Reef, in the Memorial
22 and Reply.

23
24 Mr President, Members of the Tribunal, this is a moment to respond to aspects of
25 question 3, which was given to us at about 4.30 p.m. yesterday afternoon. We were
26 very grateful for the questions. The question asks

27
28 whether the three points for Mauritius’ archipelagic baselines (C83, C84 and
29 C85) ... are the outermost points of drying reefs which are situated wholly or
30 partly at a distance not exceeding 12 NM from Île Takamaka?

31
32 The answer, as we stated in our Reply, is that they are not. I direct you to footnote
33 75 of our Reply, at page 21, which you can see on your screen. Mauritius there
34 stated that it had “become aware that point C85 was erroneously situated
35 approximately 840 metres to the north of Blenheim Reef”, and that it was replotting
36 its archipelagic basepoints and promulgating new Regulations under its Maritime
37 Zones Act 2005. In relation to Blenheim Reef, the correct archipelagic basepoints
38 are those identified by the CARIS LOTS software, which you will find in Table 4.1 on
39 page 31 of our Memorial; and it is these that we are using for the construction of a
40 revised archipelagic baseline pursuant to article 47 of the Convention. Accordingly,
41 as you will have seen from our written pleadings, in both rounds we have not relied
42 on C83, C84 or C85 – perhaps to our disadvantage because we have taken a more
43 southerly point – for the construction of the provisional equidistance line.

44
45 The second part of question 3 asks whether article 47(4) permits the use of
46 basepoints that are beyond 12 NM from Île Takamaka. Mr President, in our
47 submission, article 47(4) is concerned only with low-tide elevations, not drying reefs
48 within the meaning of article 47(1), which have full entitlements, just like an island,

¹⁰⁴ Maldives’ Rejoinder, para. 4.

¹⁰⁵ Maldives’ Counter-Memorial, para. 114.

1 and as a drying reef within the meaning of article 47(1) its distance from any island is
2 totally irrelevant. Article 47(4) is therefore not pertinent to basepoints on Blenheim
3 Reef, because it is a drying reef and therefore governed by article 47(1). Even if it
4 was only a low-tide elevation, and not a drying reef, which is not the case, you would
5 follow exactly the same approach as that set forth by Mr Parhomenko: Blenheim
6 Reef is a single feature, part of which is within 12 Miles of Île Takamaka, so you can
7 put a basepoint on any part of it. So, on either approach, article 13(1), or article
8 47(1), or even article 47(4), although we say you do not have to go there, the answer
9 to your question is: yes.

10
11 The archipelagic baselines, and the basepoints, lead to exactly the same result as if
12 the delimitation was based on basepoints situated on Blenheim Reef as a low-tide
13 elevation under article 13. Mr Parkhomenko has set out the relevant steps to be
14 applied. Whilst the basis for situating basepoints on Blenheim Reef in stage one may
15 be different – an LTE approach (under article 13) or a drying reefs approach (under
16 article 47) – the result in relation to location is exactly the same. On your screens
17 you can see the depiction of that familiar provisional equidistance line.

18
19 Mr President, Members of the Special Chamber, one minute early, thank you for
20 your kind attention. I would now ask that you invite, after lunch, Mr Reichhold to the
21 podium to address the application of stages two and three to the provisional
22 equidistance line on the basis of articles 13 and 47 of the Convention. Thank you so
23 much for your attention.

24
25 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Sands, for your
26 statement. This brings us to the end of this morning's sitting.

27
28 The hearing will be resumed at 3 p.m. The sitting is now adjourned.

29
30 *(The sitting closed at 1.10 p.m.)*