

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**



2022

Public sitting

held on Thursday, 20 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)

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**Verbatim Record**

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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

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*as Agent;*

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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,

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*as Counsel;*

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*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.*

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*as Agent;*

*and*

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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,

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

*as Assistants.*

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

5  
6 We meet this morning to hear the Maldives' first round of oral argument. I now give  
7 the floor to the Agent of the Maldives, his Excellency Mr Ibrahim Riffath, to make his  
8 opening statement. Mr Riffath.

9  
10 **MR RIFFATH:** Mr President, honourable Members of the Special Chamber, Madam  
11 Registrar, honourable Agent and members of the delegation of the Republic of  
12 Mauritius, it is a great privilege for me to appear before you today as Agent of my  
13 country, the Republic of Maldives. I previously addressed this Chamber as the Agent  
14 of the Maldives at the preliminary objections phase of these proceedings. I welcome  
15 the opportunity to do so again.

16  
17 The last time that I appeared, the Special Chamber, the Registry and the Parties'  
18 delegations were dealing with the extraordinary challenges of the COVID-19  
19 pandemic. Several members of both delegations and members of the Special  
20 Chamber were required to attend remotely. I am confident that everyone in this room  
21 shares in the pleasure of the Maldives that we are now able to conduct this hearing  
22 fully in person. That human connection is always important in resolving differences  
23 and moving forward towards a better future.

24  
25 Despite the change in the hearing format, one thing has remained constant: the  
26 Special Chamber and the Registry have arranged this hearing with their customary  
27 diligence, efficiency and courtesy. I take this opportunity to express the sincere  
28 gratitude of the Maldives for all the hard work that has gone into facilitating such an  
29 orderly hearing.

30  
31 Mr President, throughout the history of the Maldives stretching back over 2,500  
32 years, the ocean has always played a critical role in our people's identity, culture and  
33 prosperity. This is unsurprising, as our land territory of some 1,190 islands is spread  
34 over a vast portion of the Indian Ocean, measuring some 90,000 square kilometres.  
35 That is the home we have always known. Our country's oldest commercial and  
36 cultural ties were forged with peoples across Asia and Africa through maritime routes  
37 charted by courageous explorers. Our society and economy continue to rely on the  
38 ocean for their survival. The Maldives is profoundly committed to safeguarding this  
39 ancient maritime heritage. We consider ourselves as custodians of the ocean for  
40 future generations. Indeed our duty to protect and preserve the natural environment  
41 is expressly stated in our Constitution.<sup>1</sup> It is fundamental to our identity and values as  
42 a people.

43  
44 A strong commitment to upholding international law is one of the cornerstones of the  
45 foreign policy of the Maldives. The Maldives recognizes the invaluable contribution of  
46 peaceful dispute settlement in upholding the rule of law in the international order,  
47 and it of course holds institutions such as the International Court of Justice as well as

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<sup>1</sup> Counter-Memorial of the Republic of Maldives ("MCM"), para. 19, citing article 22 of the Constitution of the Republic of Maldives, 2008 (MCM, Annex 7).

1 ITLOS and other tribunals constituted pursuant to the United Nations Convention on  
2 the Law of the Sea (UNCLOS) in the highest regard.

3  
4 The Maldives is fully aware of the critical role of UNCLOS in the international efforts  
5 to ensure oceanic security and sustainability. The Maldives signed UNCLOS on  
6 10 December 1982 and ratified it on 7 September 2000. It has adopted legislation to  
7 give effect to the Convention's provisions.

8  
9 It is with an ever-increasing sense of urgency that the Maldives has sought to  
10 address the grave perils posed by climate change. Climate change poses an  
11 existential threat to all of humanity but its impacts will be felt – and are already being  
12 felt – disproportionately by small island developing States. The Maldives is  
13 particularly vulnerable to sea-level rise, both in terms of the continued existence of  
14 its territory and the security of its people. It is for this reason that the Maldives has  
15 pioneered and supported numerous international initiatives to address these threats  
16 to the marine environment and to the planet. My colleague Ms Shabeen will address  
17 this in greater detail in her statement to the Chamber.

18  
19 We also note in this regard the important role of ITLOS in addressing the obligations  
20 of States under UNCLOS to protect and preserve the marine environment – a matter  
21 which is the common concern of humanity. We take note of the recent initiative of the  
22 Commission of Small Island States on Climate Change and International Law,  
23 established a year ago at COP26, which has expressed its intention to request an  
24 advisory opinion from ITLOS on matters of great importance for UNCLOS States  
25 Parties.

26  
27 In addressing you today, we come in a spirit of good faith, determined to strengthen  
28 our already robust ties of friendship with the Government and peoples of Mauritius  
29 with whom we have shared values and experiences as small island developing  
30 States, not to mention common cultural and historical ties. We express our sympathy  
31 with the Chagossians who wish to return to their homes. The Maldives has always  
32 supported all UN processes of decolonization of territories and the right to self-  
33 determination. There are many dimensions to a diplomatic relationship that  
34 unfortunately cannot be conveyed in the context of adversarial proceedings.

35  
36 At the preliminary objections phase of these proceedings, I informed the Chamber  
37 that Mauritius appeared to have commenced these proceedings primarily with a view  
38 to advancing its bilateral dispute with the United Kingdom concerning sovereignty  
39 over the Chagos Archipelago, rather than to resolve any significant dispute with the  
40 Maldives concerning the law of the sea. The current phase of these proceedings has  
41 confirmed that the scope of the dispute between the Parties which is within the  
42 Chamber's jurisdiction is indeed very narrow. The Parties agree on the use of the  
43 established three-step methodology in the delimitation of their exclusive economic  
44 zones and continental shelves within 200 nautical miles of their baselines. Their  
45 disagreement essentially comes down to whether Mauritius is entitled to place four  
46 basepoints on low-tide elevations at Blenheim Reef, a maritime feature several miles  
47 off the coast of the nearest land territory of Mauritius. As counsel will explain, the  
48 relevant jurisprudence is clear that it cannot do so. Neither its written pleadings nor  
49 its oral submissions so far have provided any answer to the arguments raised by the  
50 Maldives.

1 In addition, there is a small “grey area” within the exclusive economic zone of  
2 Mauritius and in which the Maldives claims a continental shelf beyond 200 nautical  
3 miles. This was the subject of negotiations between the Parties after the Maldives  
4 made its submission to the Commission on the Limits of the Continental Shelf in  
5 2010. Mauritius subsequently made a formal protest against that submission in 2011,  
6 in as much as the area claimed encroaches on the EEZ of Mauritius.<sup>2</sup>  
7

8 The Maldives argues that the equidistance line generated by the three-step  
9 methodology should continue by way of a directional line, with the endpoint to be  
10 fixed following delineation of the outer limits of the outer continental shelf entitlement  
11 of the Maldives, which can occur only once the CLCS has examined the submission  
12 filed by the Maldives and made recommendations. In its written pleadings and its  
13 oral pleadings on Monday, Mauritius failed to engage with delimitation of the grey  
14 area at all.  
15

16 Those matters constitute the entirety of the dispute which existed at the time  
17 Mauritius initiated these proceedings. As the Chamber is aware, and as will be the  
18 subject of more detailed submissions by the counsel of the Maldives, UNCLOS  
19 confers jurisdiction only over disputes which predated the proceedings in question.  
20 One of the purposes of this jurisdictional precondition is that a State should be aware  
21 of the claim against it and have an opportunity to respond before being forced to  
22 participate in compulsory dispute settlement procedures. A State should never be  
23 taken by surprise by a new claim articulated for the first time in the course of litigious  
24 proceedings.  
25

26 Regrettably, the Maldives was indeed surprised by a significant expansion of the  
27 claim advanced by Mauritius when it filed its Memorial. For the first time, Mauritius  
28 claimed an outer continental shelf entitlement to the north of the Chagos  
29 Archipelago, overlapping by some 22,000 square kilometres with the entitlement of  
30 the Maldives. Mauritius had never challenged that entitlement since the Maldives  
31 filed its submission with the CLCS in 2010.  
32

33 For more than a decade, the only protest made by Mauritius was limited to the slight  
34 overlap with its entitlements within 200 nautical miles. The Maldives had no notice  
35 whatsoever of this new and extensive claim. It had never been given an opportunity  
36 to respond. We consider this to be fundamentally inconsistent with the requirements  
37 of UNCLOS as well as the basic tenets of procedural fairness. The Maldives has  
38 been forced to deal with the highly technical matters inherent in an outer continental  
39 shelf claim within the constraints of litigation.  
40

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

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<sup>2</sup> Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations, 24 March 2011 (MCM, Annex 59).

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

6  
7 Before I summarize the speeches which will be presented on behalf the Maldives,  
8 there is one further development which I wish to address. As the Chamber is aware,  
9 on 22 August 2022, the President of the Maldives sent a letter to the Prime Minister  
10 of Mauritius. This letter stated that the Maldives would vote in favour of the United  
11 Nations General Assembly Resolution entitled "Advisory opinion of the International  
12 Court of Justice on the legal consequences of the separation of the Chagos  
13 Archipelago from Mauritius in 1965". The Maldives had previously voted against this  
14 resolution for reasons which have been explained by the Maldives at the preliminary  
15 objections phase, in its written pleadings on the merits and indeed in the President's  
16 letter itself. However, as communicated in the President's letter, the Maldives has  
17 decided to vote in favour of the resolution. It has done so in view of the impending  
18 conclusion of these proceedings and with the intention of putting behind it the  
19 difficulties that arose from the formal protest which Mauritius raised in 2011 against  
20 the CLCS submission of the Maldives, several years before the 2019 advisory  
21 opinion.

22  
23 This decision reflects the long-standing and steadfast commitment of the Maldives to  
24 decolonization and to upholding the right to self-determination.

25  
26 The Maldives welcomed the decision of Mauritius, in light of this letter, to withdraw its  
27 claim against the Maldives for compensation in respect of its survey of Blenheim  
28 Reef. In a letter dated 23 September 2022, the Prime Minister of Mauritius informed  
29 the Maldives of this decision and affirmed the Parties' shared desire to maintain their  
30 warm relations. In that letter, the Prime Minister referred to his country's interest in  
31 undertaking joint measures to protect the marine environment of the Chagos  
32 Archipelago and the Maldives and to enhance maritime security in the Indian Ocean.

33  
34 Naturally, the Maldives shares precisely these aspirations. To this end, the Maldives  
35 is gratified to see that Mauritius, at the United Nations Oceans Conference on 1 July  
36 this year, announced an intention to establish a marine protected area around the  
37 Chagos Archipelago. This is a proposal which the Maldives considers to be  
38 consistent with the obligations Mauritius owes, under UNCLOS, in relation to  
39 protection and preservation of the marine environment, especially in relation to highly  
40 migratory species.

41  
42 The Maldives sincerely hopes that Mauritius will now withdraw its protest of 2011  
43 against the submission of the Maldives to the CLCS of 2010, reflecting the strong  
44 neighbourly relations between the two States. Indeed, in that context I note that,  
45 contrary to the contention advanced by counsel for Mauritius on Monday afternoon,  
46 the Maldives has never protested any submission by Mauritius to the CLCS,  
47 including the one filed in April of this year.

48  
49 Mr President, with your permission, I shall now briefly introduce the first round of oral  
50 pleadings by counsel and representatives of the Maldives. First, Professor Payam



1 Akhavan will introduce the case to be advanced by the Maldives at this hearing. He  
2 will be followed by Professor Jean-Marc Thouvenin, who will address the Special  
3 Chamber on equitable delimitation of the Parties' maritime entitlements within  
4 200 nautical miles of their coasts. Next will be Ms Amy Sander. She will set out the  
5 position of the Maldives on delimitation of the so-called "grey area", where the claim  
6 on the part of the Maldives to an outer continental shelf overlaps with the  
7 entitlements of Mauritius within 200 nautical miles. She will be followed by  
8 Ms Mariyam Shaany, who will speak about the good faith cooperation on the part of  
9 the Maldives in relation to the survey conducted by Mauritius earlier this year. After  
10 Ms Shaany will come Ms Khadeeja Shabeen, who will address the importance of the  
11 marine environment for the Maldives, with a particular focus on fisheries, climate  
12 change and the leadership shown by the Maldives in multilateral initiatives.

13

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

23

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

31

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

35

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

45

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

48

49 **MR AKHAVAN:** Mr President, distinguished members of the Special Chamber, good  
50 morning. It is an honour to appear before you on behalf of the Republic of Maldives.

1 I take this opportunity to also extend greetings to the delegation of Mauritius. It is  
2 indeed a relief to be in the post-pandemic world, to meet friends and colleagues in  
3 person once again, and to shake hands without immediately to reach for the hand  
4 sanitizer.

5  
6 My task today is to introduce the Maldives' case; to provide a summary of the most  
7 important issues dividing the Parties. But if you allow me, Mr President, I will make  
8 two preliminary observations at the outset.

9  
10 First, you will be well aware that throughout these proceedings, the emphasis in the  
11 Maldives' pleadings has been, and remains, that the Special Chamber should apply  
12 the 1982 Convention consistent with the settled jurisprudence. The very notion of the  
13 rule of law is based on the predictability and stability of results. The willingness of  
14 UNCLOS States Parties – and respondent States in particular – to enter into special  
15 agreements recognizing ITLOS's jurisdiction, depends on such consistency. The  
16 same consideration applies to respect for the ITLOS Rules and principles of  
17 procedural fairness. Litigants must be confident that the breach of those rules and  
18 principles will have consequences; if they have no consequences, then they are not  
19 rules or principles at all.

20  
21 I begin on this note because the recurrent theme in Mauritius' pleadings on Monday  
22 was that you should be creative; you should make history. Who cares about  
23 precedent and procedure when you could instead paint a masterpiece on a blank  
24 canvas? You are, Mauritius' counsel told us, the first to delimit the maritime  
25 boundary between two archipelagic States, so let us imagine that drying reefs are  
26 land territory and draw an equidistance line accordingly; and why bother with  
27 formalistic questions of jurisdiction and admissibility, we were admonished, when  
28 you could delimit a non-existent entitlement to an outer continental shelf with a  
29 perfect line of symmetry? Indeed, why let the absence of evidence stand in the way  
30 of this great work of art, when an expert report could achieve in a few weeks what it  
31 would take the CLCS several years to accomplish?

32  
33 That, Mr President, was the recurrent theme in Mauritius' pleadings on Monday,  
34 inviting you to render the jurisprudential equivalent of a surreal painting by  
35 Salvador Dalí. We are confident that this Chamber knows better. UNCLOS States  
36 Parties did not sign up for unrestrained judicial activism. They consented to the  
37 Part XV procedures to achieve predictable and stable results; and they consented  
38 based on respect for principles of procedural fairness.

39  
40 This brings me to the second preliminary observation, namely the scope of the  
41 dispute that is within your jurisdiction and on which the Maldives will address the  
42 merits. You will be well aware that the third preliminary objection of the Maldives in  
43 this proceeding was the absence of a dispute. Like the other questions that were  
44 before you at that stage, the issue was vigorously litigated. Mauritius had every  
45 opportunity to establish the existence of a dispute in respect of delimitation of  
46 overlapping claims in the outer continental shelf. It clearly did not do so. It did not  
47 ever mention such a claim, because such a claim did not exist. On the basis of  
48 Mauritius' own pleadings, this is what your judgment concluded:

1 332. In the view of the Special Chamber, it is clear from the above that there  
2 is an overlap between the claim of the Maldives to a continental shelf beyond  
3 200nm and the claim of Mauritius to an exclusive economic zone in the  
4 relevant area. In light of the formal protest of Mauritius, in its diplomatic note  
5 of 24 March 2011, to the submission by the Maldives to the CLCS, the Parties  
6 clearly hold opposite views and the claim of the Maldives is positively opposed  
7 by Mauritius.<sup>3</sup>  
8

9 Mr President, the honourable Agent of Mauritius explained on Monday that an  
10 essential purpose of these proceedings has been to enable Mauritius to definitively  
11 establish its maritime spaces and sovereign rights under international law.<sup>4</sup>  
12

13 It has achieved this purpose to the extent that this Chamber found that the effect of  
14 the 2019 ICJ advisory opinion was to resolve what it characterized as a long-  
15 standing sovereignty dispute between Mauritius and the United Kingdom.<sup>5</sup> The  
16 judgment found that for the purposes of UNCLOS, Mauritius is the only coastal State  
17 in respect of the Chagos Archipelago. It is an exceptional, if not historic precedent. It  
18 raises far-reaching questions about the incidental jurisdiction of ITLOS and Part XV  
19 procedures where maritime boundary disputes implicate questions of territorial  
20 sovereignty. By way of example, last week, on October 12, the UN General  
21 Assembly adopted resolution ES-11/4 by 143 votes to 5, declaring that Russia's  
22 annexation of Ukraine's territory is unlawful.<sup>6</sup> Would Ukraine be able to establish  
23 jurisdiction on this basis, or would it still need an advisory opinion?  
24

25 Mr President, perhaps these are interesting questions for an academic seminar. But  
26 what matters for present purposes is that there is now a legally binding judgment that  
27 has resolved such uncertainties between the Parties. Mauritius and the Maldives will  
28 soon have a maritime boundary, thanks to the efforts of this Special Chamber. It is a  
29 felicitous outcome. The Parties have put past difficulties behind them. They move  
30 forward as two neighbours, in a spirit of friendship as two small island developing  
31 States, grappling with protection of the marine environment, catastrophic climate  
32 change, and the other common challenges confronting them in the years ahead.  
33

34 But the time for historic precedents in this proceeding is over. What remains is  
35 simply a maritime boundary dispute that should be resolved strictly in accordance  
36 with UNCLOS and the settled jurisprudence. This applies both in respect of the  
37 merits, and the new questions of jurisdiction and admissibility that Mauritius' new  
38 claim to an outer continental shelf, OCS, have raised. With the greatest respect,  
39 Mauritius cannot have it all. It cannot now pick and choose only those parts of the  
40 judgment on preliminary objections that it likes, while disregarding the rest. There  
41 can be no more exceptions. There must be a sense of balance in this proceeding.  
42

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<sup>3</sup> *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Judgment on Preliminary Objections*, 28 January 2021 ("Judgment on Preliminary Objections"), para. 332.

<sup>4</sup> ITLOS/PV.22/C28/1, p. 7 (lines 3–5) (Dabee). At the time of drafting, the Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

<sup>5</sup> Judgment on Preliminary Objections, para. 242.

<sup>6</sup> United Nations General Assembly Resolution ES-11/4, "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations", 12 October 2012, Doc No. A/RES/ES-11/4.

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

13

14 Mr President, as Mauritius confirmed on Monday, the dispute before you is  
15 essentially about four base points on Blenheim Reef. Mauritius argues that those  
16 basepoints are relevant for delimitation, even if they are situated on low-tide  
17 elevations labelled as "drying reefs". The Maldives argues to the contrary, that for the  
18 purposes of delimitation, basepoints should not be placed anywhere on Blenheim  
19 Reef. That is the central issue dividing the Parties.<sup>7</sup>

20

21 In particular, the dispute is whether there is a "relevant coast" on Blenheim Reef, and  
22 whether basepoints may be located there for the construction of the equidistance  
23 line. Mauritius has identified what it claims to be the relevant four locations as  
24 MUS-BSE-10 to 13. These are depicted in the figure which now appears on the  
25 screen, which is based on Figure 5 from the Maldives' Rejoinder.<sup>8</sup> The location of the  
26 alleged low-tide elevations is based upon the Satellite-Derived Bathymetry report for  
27 Blenheim Reef commissioned by Mauritius in 2021.<sup>9</sup> The close-up shows that three  
28 of them — MUS-BSE-11 to 13 — are apparently in the water.

29

30 You have now heard Mauritius' case. You were told that the authorities produced by  
31 the Maldives<sup>10</sup> — namely, *Qatar v. Bahrain*,<sup>11</sup> *Bangladesh v. India*,<sup>12</sup> and *Somalia v.*  
32 *Kenya*<sup>13</sup> — are somehow all inapplicable, and even support Mauritius' position. You  
33 were told that there is no special rule prohibiting the placing of base points on  
34 low-tide elevations; that in every one of these precedents the finding was a result of  
35 unique circumstances in that particular case. You were told that the Chamber cannot  
36 preclude the possibility that exceptional circumstances could justify the placing of  
37 base points on low-tide elevations. But throughout its written pleadings, Mauritius  
38 failed to produce a single example demonstrating exactly what such exceptional  
39 circumstances might look like. That is, until Monday, when Mauritius claimed that it  
40 had finally found an authority in support of its position; or so it seemed.

41

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<sup>7</sup> See Rejoinder of the Republic of Maldives ("MRJ"), para. 4.

<sup>8</sup> MRJ, p. 24.

<sup>9</sup> See Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (Reply of the Republic of Mauritius ("MR")), Annex 1, Annex 2, Figure 4.

<sup>10</sup> Counter-Memorial of the Republic of Maldives ("MCM"), paras. 138–148; MRJ, paras. 26–43.

<sup>11</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40.

<sup>12</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014.

<sup>13</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021.

1 On Monday, your attention was turned to Edinburgh Reef in the 2012 *Nicaragua v.*  
2 *Colombia* judgment. You were told that the ICJ drew an equidistance line placing  
3 base points on this feature despite the fact that it is a low-tide elevation.<sup>14</sup> Surely,  
4 what the ICJ did for Edinburgh Reef in the Caribbean, you could similarly do for  
5 Blenheim Reef in the Indian Ocean. But what you weren't told, Mr President, is that  
6 in 2012, the Court had been led by Nicaragua to believe that Edinburgh Reef was an  
7 island.<sup>15</sup> Only later did the Court realize that this might not be correct; that the  
8 feature may in fact be a low-tide elevation. That is exactly why in its subsequent  
9 2022 judgment, it did not place base points there for the purpose of drawing straight  
10 baselines.<sup>16</sup> Our friends on the other side will be familiar with that case. It does not  
11 assist them. Professor Thouvenin will have more to say on this.

12  
13 Mauritius' argument on archipelagic baselines is equally unconvincing, and entirely  
14 unsupported. You were told on Monday that there is something unique, something  
15 magical, about the waters enclosed by archipelagic baselines; that the archipelagic  
16 waters of Chagos have the same status as internal waters, under the full sovereignty  
17 of Mauritius; that they "are to be treated ... in a manner that is indistinguishable from  
18 the sovereignty [Mauritius] enjoys in relation to an island or any other land  
19 territory."<sup>17</sup> It is difficult to understand how this could be said with such confidence.  
20 For one thing, "ships of all States enjoy the right of innocent passage through  
21 archipelagic waters". Those are the exact words of article 52(1) of the Convention.  
22 Surely, there can be no such right of passage in internal waters of States, let alone a  
23 right of passage of ships across land territory.

24  
25 In brief, Mr President, Mauritius asks this Chamber to disregard the consistent  
26 practice of courts and tribunals in disregarding low-tide elevations for the purpose of  
27 drawing an equidistance line; it asks you to do so without providing any authority  
28 whatsoever to support its contrary position on inclusion of the four base points.

29  
30 Mr President, on Monday, you heard much about Mauritius' survey. You were told  
31 that it has "changed the state of our knowledge" of this feature;<sup>18</sup> that there were  
32 significant discoveries arising from this expedition. This emphasis on the survey is a  
33 matter of curiosity. Its ostensible purpose was to take bathymetric measurements  
34 and to confirm the location of the four base points on which Mauritius seeks to rely.  
35 That is what the Maldives was told by Mauritius when it first proposed the survey;  
36 but, to the best of our knowledge, based on the information presented in the survey  
37 report, it took no such measurements. Having travelled to the middle of the Indian  
38 Ocean, and having placed its survey stations within 429 m of the basepoints on  
39 which it relies,<sup>19</sup> it surveyed many things, but not the location of the four base points.  
40 It is difficult to understand why – or perhaps the locations were surveyed and, for  
41 some reason, Mauritius elected not to include the results in its report. We simply do  
42 not know. Perhaps Mauritius will clarify its position in its second-round pleadings on  
43 Saturday.

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<sup>14</sup> ITLOS/PV.22/C28/1, p. 29 (lines 28–30) (Parkhomenko).

<sup>15</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment of 21 April 2022, paras. 250–251.

<sup>16</sup> *Ibid.*

<sup>17</sup> ITLOS/PV.22/C28/1, p. 39 (lines 14–16) (Sands).

<sup>18</sup> ITLOS/PV.22/C28/1, p. 11 (lines 43–44) (Sands).

<sup>19</sup> See MRej, Figure 5.

1 We do know however, based on the statements of Mauritius' own scientific and  
2 technical experts, that even in respect of the measurements they did conduct in  
3 certain locations on Blenheim Reef, there was inadequate time to arrive at  
4 meaningful conclusions. The statement of Dr David Dodd states that: "The tide  
5 observation period at Blenheim Reef of approximately 56 hrs was much shorter than  
6 usually required for appropriate tidal analysis, and subsequent establishment of tidal  
7 datums...."<sup>20</sup>

8  
9 Nonetheless, as Counsel for Mauritius emphasized repeatedly, the Maldives has not  
10 disputed the findings of the survey. What we fail to understand is why, having  
11 insisted on the necessity of gathering accurate information on the grounds that  
12 existing nautical charts and satellite imagery were inaccurate, and having told you  
13 that it is a massive feature the size of several football fields, Mauritius abandoned its  
14 own survey report when it came to describing Blenheim Reef as a single low-tide  
15 elevation, rather than 57 distinct elevations, most of which are beyond 12 nm of the  
16 nearest land territory on Île Takamaka. In order to prove its point, Counsel for  
17 Mauritius resorted to precisely the same sources that it had insisted were inaccurate  
18 and inadequate, and which made the survey necessary.

19  
20 Mr President, you will recall these nautical charts and satellite images from the  
21 pleadings on Monday. None of these are based on the data gathered from its survey.  
22 The first one is a British chart published in 1998; the second is an Indian  
23 Hydrographic Office chart first published in 1992; the third is a chart that was first  
24 published by the Soviet Union in 1964; and the fourth is a NIMA Chart which has not  
25 been updated since 1997. That data is between 24 and 58 years old, compared to  
26 the survey data from earlier this year. Presumably, much of this feature has since  
27 been submerged because of sea-level rise. What is more, the primary purpose of  
28 nautical charts is the safety of navigation. Mr President, not far from here we see the  
29 massive container ships on the Elbe River, going to and from the port of Hamburg.  
30 Some have draughts of up to 20 m. The master of a ship is simply interested in  
31 avoiding a collision with such shallow features, even if they are fully submerged at  
32 low tide. We invite Mauritius to abandon those nautical charts and rely on its own,  
33 more accurate survey report.

34  
35 This brings me to the only useful information arising from the survey; namely,  
36 confirmation that Blenheim Reef is definitely not a single low-tide elevation.  
37 Mr President, Counsel for Mauritius expressed some confusion as to the source of  
38 the Maldives' data in this respect. "We have no idea ... where the number 57 comes  
39 from",<sup>21</sup> he said in surprise. There was even something about Heinz ketchup, on the  
40 condimental kitchen shelf, claiming that each bottle consists of 57 tomatoes, without  
41 any proof of the Maldives' "57 different varieties of tomato".<sup>22</sup> We have an easy  
42 answer for Mauritius. It needs to look no further than its own survey report. The  
43 57 different varieties are the fruits of its own effort — and I add, Mr President, that a  
44 tomato is a fruit, not a vegetable.

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<sup>20</sup> Dr David Dodd, *Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references*, 28 March 2022 (MR, Annex 2).

<sup>21</sup> ITLOS/PV.22/C28/1, p. 14 (lines 37) (Sands).

<sup>22</sup> ITLOS/PV.22/C28/1, p. 16 (lines 32) (Sands).

1 This is Figure 4 of the Satellite Derived Bathymetry Report for Blenheim Reef  
2 commissioned by Mauritius in 2021.<sup>23</sup> The areas depicted in red, and only those  
3 areas, are the parts of the reef which are above water at lowest astronomical tide.  
4 You will notice that there is not one large red area; rather, there are numerous small  
5 red areas with significant gaps between them. What the Maldives did was digitize  
6 those features and display them without the parts which remain below the surface of  
7 the water. Here is the comparison. The number 57 was reached by simply counting  
8 the separate elevations which, according to Mauritius' own data, are above water at  
9 low tide. It is evident that the distances between them are substantial. For example,  
10 here you can see a distance of 564 m between LTEs 10 and 11. You can also see  
11 that LTE 7, which is the last low-tide elevation partially within 12 miles of  
12 Île Takamaka, is separated by a distance of 56 m from the next elevation; that is half  
13 a football field.

14  
15 These measurements confirm that even if they are not in fact fully submerged at low  
16 tide, none of the four base points claimed by Mauritius are either wholly or partly  
17 within 12 nm of the nearest land territory. They are up to 3.87 nm to the north-east of  
18 the last elevation within the territorial sea, as depicted by the purple arrow in Figure 5  
19 of the Maldives' Rejoinder. Mr President, placing base points beyond the territorial  
20 sea for measuring the breadth of Mauritius' EEZ is clearly inconsistent with both  
21 UNCLOS article 13(1) and article 47(4) in respect of archipelagic baselines. Thus,  
22 there must be an adjustment of the line marking 200 nm from those baselines,  
23 moving it approximately 3.5 nm to the south-west. This relates to the third question  
24 posed by the Chamber on the afternoon of October 16; it will be addressed further by  
25 Professor Thouvenin.

26  
27 The relevance of this information is in defining the area of overlap, but not in respect  
28 of entitlements within 200 nm of the Parties' coasts — instead, in the area identified  
29 by the Chamber in its Preliminary Objections Judgment; namely between “the claim  
30 of the Maldives to a continental shelf beyond 200nm and the claim of Mauritius to an  
31 exclusive economic zone in the relevant area.”<sup>24</sup> The necessary adjustment of  
32 Mauritius' EEZ as a result of the evidence of 57 LTEs further reduces the small area  
33 of overlap, which was at issue when Mauritius formally protested in 2011 against the  
34 Maldives' CLCS submission of the previous year. Ms Sander will have more to say  
35 on this point, including the Chamber's second question regarding the overlap  
36 between these two differing maritime entitlements.

37  
38 Mr President, it is fortunate that Mauritius has decided to withdraw its claim for  
39 compensation regarding the survey. The Maldives has demonstrated that it acted in  
40 good faith and a spirit of cooperation, and continues to welcome the use of its ports  
41 by the honourable Prime Minister of Mauritius. Ms Shaany will address the Chamber  
42 on this matter.

43

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<sup>23</sup> See Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (MR, Annex 1), Annex 2, Figure 4.

<sup>24</sup> *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment on Preliminary Objections, 28 January 2021 (“Judgment on Preliminary Objections”), para. 332.

1 The Maldives also welcomes the fact that Mauritius' Memorial dropped its equally  
2 baseless claim regarding provisional arrangements under UNCLOS articles 74(3)  
3 and 83(3).  
4

5 That would have left just four base points in dispute, which the Parties could surely  
6 resolve without the significant costs of litigation. But then, four months after the  
7 Judgment on Preliminary Objections, the day before filing its Memorial, and for the  
8 first time ever, Mauritius suddenly claimed an entitlement to a continental shelf  
9 beyond 200 nm to the north of the Chagos Archipelago. The small initial overlap of  
10 just 516 square kilometres between Mauritius' EEZ and the Maldives' claim in its  
11 2010 CLCS submission was suddenly transformed into an overlap of 22,000 square  
12 kilometres. It suddenly unsettled the Maldives' claim after 10 years of acquiescence.  
13 Then, 11 months later, and just two days before filing its Reply, Mauritius filed a  
14 CLCS submission, seeking to cement its claim. To our knowledge (and Mauritius has  
15 not suggested otherwise), this is unprecedented in inter-State proceedings.  
16

17 To make matters worse, Mauritius failed to properly explain the basis for its claim,  
18 until Monday, when Dr Badal first explained the exact scientific and technical basis  
19 for the claim of natural prolongation along the Gardiner Seamounts. The ITLOS  
20 Rules — notably article 62 — and principles of procedural fairness, require a State,  
21 especially an applicant State, to present a case that remains within the scope of the  
22 dispute, and to do so in full in its Memorial.<sup>25</sup> Mr President, an applicant State that  
23 rushes to litigate must accept the consequences: the same applies for failing to  
24 produce evidence that has been available for decades until the final stages of  
25 pleadings. The Maldives has been prejudiced in this regard, and we hope that the  
26 Chamber will attach consequences to the breach of these rules and principles;  
27 otherwise, they are not rules and principles at all.  
28

29 Mr President, you will be aware that the Parties have exchanged views in respect of  
30 Mauritius' inclusion of Dr Badal as a counsel and advocate, rather than an expert  
31 witness subject to cross-examination. I have had the great pleasure of meeting  
32 Dr Badal in these proceedings, and he is both a gentleman and a learned scientist,  
33 working in the Office of the Prime Minister of Mauritius; but he is not a lawyer; and  
34 that is not meant to be disrespectful, because calling someone a lawyer is not  
35 necessarily a compliment.  
36

37 We recognize that the Rules do not specifically require counsel to have legal  
38 training. But there is a significant risk that an expert, addressing scientific and  
39 technical matters within his area of expertise, will in fact stray into territory reserved  
40 for an expert witness. In fact, Dr Badal introduced new arguments that appear  
41 nowhere in Mauritius' Reply. The alleged saddle between the Chagos Ridge and  
42 Maldives Ridge is but one example. We have had just 48 hours to prepare a  
43 response, not having called an expert witness, and we would certainly not place our  
44 friends on the other side in such a situation. Fortunately, despite this element of  
45 surprise, nothing in Dr Badal's testimony has changed the fact that Mauritius' new  
46 claim is manifestly unfounded, as I shall explain tomorrow.  
47

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<sup>25</sup> MRej, paras. 107–111.



1 So why, may it be asked, has the Maldives been opposed to an expert opinion  
2 arranged by the Chamber? Is it afraid that an independent scientist would conclude  
3 that the Gardiner Seamounts are a basis for natural prolongation? Absolutely not:  
4 that is not the issue. As the Maldives made clear in its August 31 letter to the  
5 Chamber, the point of procedure – a fundamental point of procedure – is that, in the  
6 words of the ICJ in *Pulp Mills*, “in accordance with the well-established principle of  
7 *onus probandi incumbit actori*, it is the duty of the party which asserts certain facts to  
8 establish the existence of such facts”.<sup>26</sup> The Chamber cannot relieve Mauritius of its  
9 burden of proof. It cannot produce evidence, where the party making a claim to an  
10 outer continental shelf has failed to even make a *prima facie* case. An expert opinion  
11 would only be necessary, if there is relevant and divergent evidence that requires  
12 clarification, not to assist one of the Parties to establish its claim.

13  
14 We note further the Maldives’ position that if the Chamber were to arrange an expert  
15 opinion under article 82 of the ITLOS Rules, it would be prejudicial, necessarily  
16 prejudicial, to questions of jurisdiction and admissibility that it has raised. The  
17 Maldives has of course promptly complied with the Chamber’s request on Sunday,  
18 October 16 and produced additional evidence in respect of its CLCS submission of  
19 2010. However, the production of evidence at this late stage creates considerable  
20 difficulties. The Parties are asked to comment on complex technical matters within a  
21 week, or three weeks, when the CLCS would consider the same questions over  
22 several years.

23  
24 On Monday, my friend Mr Loewenstein referred to several precedents, including  
25 *Guyana v. Suriname*<sup>27</sup> and *Costa Rica v. Nicaragua*,<sup>28</sup> where courts and tribunals  
26 appointed experts;<sup>29</sup> but those circumstances were radically different to those of the  
27 present case. Appointing a hydrographer to assist in drawing an accurate maritime  
28 boundary,<sup>30</sup> or a geographer to assist in identifying the starting point for  
29 delimitation,<sup>31</sup> is hardly analogous with an expert opinion on entitlement to an outer  
30 continental shelf. Why would UNCLOS States Parties establish the CLCS process  
31 and consider submissions over several years if an expert opinion could solve the  
32 matter in a few weeks?

33  
34 That is why the ITLOS practice is to refrain from exercising jurisdiction where there is  
35 significant uncertainty; not to appoint an expert opinion as a substitute for the CLCS  
36 process.

37  
38 Mr President, this brings me to the first question the Chamber addressed to the  
39 Parties on October 16, namely, “what would be the consequence if the CLCS takes a

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<sup>26</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010, p. 14 at p. 71, para. 162.

<sup>27</sup> *Guyana v. Suriname*, Award, 17 September 2007.

<sup>28</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139.

<sup>29</sup> ITLOS/PV.22C28/2, p. 19 (lines 16–23) (Loewenstein).

<sup>30</sup> *Guyana v. Suriname*, Award, 17 September 2007, para. 108.

<sup>31</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 147, para. 10.

1 different position than the submissions of 2010 and 2022 respectively of the Parties  
2 on their entitlements in its recommendations?"

3  
4 Article 76(8) provides in relevant part that

5  
6 [t]he Commission shall make recommendations to coastal States on matters  
7 related to the establishment of the outer limits of their continental shelf. The  
8 limits of the shelf established by a coastal State on the basis of these  
9 recommendations shall be final and binding.

10  
11 Article 8 of Annex II further provides that

12  
13 [i]n the case of disagreement by the coastal State with the recommendations  
14 of the Commission, the coastal State shall, within a reasonable time, make a  
15 revised or new submission to the Commission.

16  
17 In this regard, the Second Report of the ILC Committee on Legal Issues of the Outer  
18 Continental Shelf, from 2006, is instructive. Its members included Judge Dolliver  
19 Nelson, Judge Jean-Pierre Cot, and other distinguished experts. They observed that:  
20 "The Convention does not indicate how a continued disagreement between a coastal  
21 State and the Commission is to be resolved."<sup>32</sup> They observed further that: "The  
22 dispute settlement procedures entailing binding decisions under Part XV of the  
23 Convention are not available" – not available – to resolve such a difference."<sup>33</sup>  
24 Scholars have presented two views on such an eventuality. Some, such as  
25 Professor McDorman, suggest that the process could go on indefinitely.<sup>34</sup> Others,  
26 such as Professor Caflisch, suggest that in case of continued difference, the coastal  
27 State might eventually establish the outer limits in accordance with its submission,<sup>35</sup>  
28 though he, and others such as Professor Treves, recognize that in such a case, the  
29 outer limits will not be opposable to other States.<sup>36</sup>

30  
31 The question posed by the Chamber is an important one, but it is a matter of  
32 speculation whether, in fact, several years from now, the CLCS will make  
33 recommendations that differ from the Parties' submissions and, if so, whether the  
34 Parties would elect to make a revised submission and whether there would still be  
35 disagreement with a subsequent recommendation of the Commission.

36  
37 There are also important considerations such as technological innovations that could  
38 significantly transform the scientific and technical data that informs the CLCS  
39 process. As I will explain, the measured bathymetric data in this region relied on by  
40 both the Maldives and Mauritius is more than 40 years old, some even from the

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<sup>32</sup> International Law Association, Committee on Legal Issues of the Outer Continental Shelf, Second Report, Toronto Conference (2006), Conclusion No. 17, p. 21.

<sup>33</sup> *Ibid.*, Conclusion No. 17, p. 22.

<sup>34</sup> Ted L. McDorman, "The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World" (2002) 17 International Journal of Marine and Coastal Law 301, p. 306.

<sup>35</sup> L.C. Caflisch "The Settlement of Disputes relating to Activities in the International Seabed Area" in C.L. Rozakis and C.A. Stephanou (eds) (Elsevier Science Publishers B.V., Amsterdam: 1983) 303, p. 324.

<sup>36</sup> L. Caflisch "Les Zones Maritimes sous Juridiction Nationale, leurs Limites et leur Délimitation" in D. Bardonnet and M. Virally Le Nouveau Droit International de la Mer (Éditions A. Pedone, Paris: 1983) 35, p. 106; T. Treves "La Nona Sessione della Conferenza sul Diritto del Mare" (1980) 63 Rivista di Diritto Internazionale 432, p. 438.

1 1950s. There is simply no comparison with the accuracy and resolution of the new  
2 technology.

3  
4 The point, Mr President is that there is no justification for the Chamber to assume the  
5 role of the CLCS today, based on what may or may not happen several years from  
6 now.

7  
8 In this respect, we note Mauritius' view on Monday that

9  
10 ...in the unlikely event the CLCS were to differ in its recommendations, the  
11 Parties may, under article 8 of Annex II, make a revised or new submissions  
12 to the Commission, including ones that formally inform the Commission of the  
13 judgment, and of the Parties' obligations under article 296 of the Convention  
14 to comply with it. Indeed, the Judgment of the Special Chamber would be  
15 binding, and would preclude the Parties from accepting recommendations  
16 from the CLCS that conflicted with it.<sup>37</sup>

17  
18 But that cannot be right. Article 76(8) is unambiguous: "The limits of the shelf  
19 established by a coastal State on the basis of [CLCS] recommendations shall be  
20 final and binding." Its meaning and consequence is made clear by the ILA Report of  
21 2006:

22  
23 The term "final" means that the outer limits shall no longer be subject to  
24 change. The term 'binding' implies an obligation to accept the outer limits as  
25 established. If the outer limits of the continental shelf have been established  
26 in accordance with the substantive and procedural requirements of article 76  
27 they will be final and binding on the coastal State concerned and other States  
28 Parties to the Convention. Outer limits lines that have not been established in  
29 accordance with these requirements will not become binding on other  
30 States.<sup>38</sup>

31  
32 That is the view of the ILA Committee.

33  
34 This makes clear that the CLCS has the final word, not the Part XV procedures. That  
35 was the intention of the drafters. The ILA Committee does suggest that "[a] court or  
36 tribunal may, in a judgment on a dispute between States Parties to the Convention,  
37 find that a recommendation or another act of the CLCS is invalid."<sup>39</sup> But that does  
38 not mean that it is entitled to substitute the scientific and technical functions of the  
39 CLCS. This incidental jurisdiction merely applies to questions such as, for instance,  
40 "the Commission has acted within the limits of its competence or *ultra vires*, or that  
41 an act of the Commission is invalid for other reasons, such as procedural  
42 irregularities or material error."<sup>40</sup>

43  
44 As the ICJ explained in the *Nuclear Weapons Advisory Opinion*, the principle of  
45 speciality applies to international bodies because "they are invested by the States  
46 which create them with powers, the limits of which are a function of the common

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<sup>37</sup> ITLOS/PV.22C28/2, p.31 (lines 26–31) (Loewenstein).

<sup>38</sup> International Law Association, Committee on Legal Issues of the Outer Continental Shelf, Second Report, Toronto Conference (2006), Conclusion No. 11, p. 15.

<sup>39</sup> *Ibid.*, Conclusion No. 22, p. 28.

<sup>40</sup> *Ibid.*, Conclusion No. 21, p. 28.

1 interests whose promotion those States entrust to them.”<sup>41</sup> Similarly, the powers of  
2 ITLOS and the CLCS respectively are to be interpreted in light of “the logic of the  
3 overall system”<sup>42</sup> contemplated by UNCLOS.

4  
5 Mr President, on Monday, Mauritius told you that you could pretty much do anything  
6 that you want as long as it involves interpretation of UNCLOS. They said “[t]he fact  
7 that the Convention assigns to the CLCS the role of ascertaining the outer limits of  
8 the continental margin ... does not block a court or tribunal ... from making the same  
9 assessment”.<sup>43</sup> But this is flatly contradicted by ITLOS jurisprudence. *Bangladesh v.*  
10 *Myanmar* held that

11  
12 [j]ust as the functions of the Commission are without prejudice to the questions  
13 of delimitation of the continental shelf between States with opposite or  
14 adjacent coasts, so the exercise by international courts and tribunals of their  
15 jurisdiction regarding the delimitation of maritime boundaries, including that of  
16 the continental shelf, is without prejudice to the exercise by the Commission  
17 of its functions on matters related to the delineation of the outer limits of the  
18 continental shelf.<sup>44</sup>

19  
20 But it is not only in respect of delineation of the outer limits that ITLOS has deferred  
21 to the CLCS. It is also in respect of the predicate fact of entitlement. *Bangladesh v.*  
22 *Myanmar* noted that “[d]elimitation presupposes an area of overlapping entitlements.  
23 Therefore, the first step in any delimitation is to determine whether there are  
24 entitlements and whether they overlap.”<sup>45</sup> It held, based on “uncontested scientific  
25 evidence” in that case, that

26  
27 [n]otwithstanding the overlapping areas indicated in the submissions of the  
28 Parties to the Commission, *the Tribunal would have been hesitant to proceed*  
29 *with the delimitation of the area beyond 200 nm had it concluded that there*  
30 *was significant uncertainty as to the existence of a continental margin in the*  
31 *area in question.*<sup>46</sup>

32  
33 *Bangladesh v. Myanmar* emphasized the Commission’s special expertise on  
34 scientific and technical issues, including in the fields of geology, geophysics and  
35 hydrography.<sup>47</sup> It observed that while article 76 “contains elements of law and  
36 science, [and] its proper interpretation and application requires both legal and  
37 scientific expertise”,<sup>48</sup> it could exercise jurisdiction in respect of the Bay of Bengal

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<sup>41</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ Reports 1996, p. 66 at p. 78, para. 25.

<sup>42</sup> *Ibid.*, p. 80, para. 26.

<sup>43</sup> ITLOS/PV.22C28/2, p. 31 (lines 4–7) (Loewenstein).

<sup>44</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379. This paragraph was cited with approval by the ICJ in *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 189.

<sup>45</sup> *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 397.

<sup>46</sup> *Ibid.*, para. 443 (emphasis added).

<sup>47</sup> *Ibid.*, para. 375.

<sup>48</sup> *Ibid.*, para. 411.

1 because “the Parties’ entitlement to a continental shelf beyond 200 nm *raises issues*  
2 *that are predominantly legal in nature*”.<sup>49</sup> Legal and not scientific.

3  
4 Similarly, in *Ghana v. Côte d’Ivoire*, the Special Chamber held that before exercising  
5 jurisdiction it must ascertain “whether the relevant [CLCS] submissions are  
6 admissible”.<sup>50</sup> It found as a matter of admissibility that

7  
8 [t]he Special Chamber can delimit the continental shelf beyond 200nm only if  
9 such a continental shelf exists. *There is no doubt – no doubt – about this in*  
10 *the case before the Special Chamber*. Ghana has already completed the  
11 procedure before the CLCS. Côte d’Ivoire has made its submission to the  
12 CLCS and, although as yet the latter has not issued any recommendation, the  
13 Special Chamber has no doubt that a continental shelf beyond 200 nm exists  
14 for Côte d’Ivoire since its geological situation is identical to that of Ghana, for  
15 which affirmative recommendations of the CLCS exist.<sup>51</sup>

16  
17 Mr President, the ITLOS practice is clear. If there is significant doubt as to  
18 entitlement, this Special Chamber should not exercise jurisdiction. The answer is not  
19 to speculate that a coastal State may or may not accept future CLCS  
20 recommendations several years from now, and to thereby justify, with the greatest  
21 respect, usurpation of the functions of CLCS under the Convention. The answer is  
22 not to arrange an expert report as a substitute for the exacting CLCS process  
23 established by States Parties over almost a decade of negotiations at the Third UN  
24 Conference on the Law of the Sea.

25  
26 I also note, Mr President, Mauritius’ argument that only this Chamber can break the  
27 deadlock created by objections to CLCS submissions under article 5 of Annex I of  
28 the CLCS Rules of Procedure.<sup>52</sup>

29  
30 You were told on Monday that “Mauritius and Maldives have each objected to the  
31 other’s submission in regard to the northern Chagos Archipelago region on the basis  
32 of their dispute concerning their continental shelf boundaries.”<sup>53</sup> That is what you  
33 were told, but that is simply not true. Unlike Mauritius, as the Agent noted, the  
34 Maldives has not made a formal protest against Mauritius’ 2022 submission. That  
35 much is clear. It has simply indicated that the matters it raises are subject to pending  
36 proceedings and reserves its right to address relevant issues in due course.<sup>54</sup> It is  
37 only Mauritius that since 2011 has formally protested against the Maldives’ CLCS  
38 submission because of a slight overlap of 516 square kilometres in its EEZ.<sup>55</sup>

49 *Ibid.*, para. 413 (emphasis added).

50 *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, para. 482.

51 *Ibid.*, para. 491 (emphasis added).

52 ITLOS/PV.22C28/2, p. 30 (line 24) (Loewenstein).

53 ITLOS/PV.22C28/2, p. 30 (lines 16–18) (Loewenstein).

54 Diplomatic Note Ref. 2021/UN/N/16 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 15 July 2021 (MCM, Annex 63); Diplomatic Note Ref. 2022/UN/N/25 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 13 June 2022 (MRej, Annex 11).

55 Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations, 24 March 2011 (MCM, Annex 59).

1 With the greatest respect, it is disingenuous to hold the Maldives' CLCS submission  
2 hostage for more than a decade and then ask the Chamber to solve the problem  
3 Mauritius itself has created. That objection of 2011 was the cause of differences, as  
4 the Maldives set out in its explanation of vote in respect of General Assembly  
5 resolution 73/295 in 2019. Surely, if Mauritius has come to these proceedings in  
6 a spirit of friendly relations, to move beyond past differences, it could write to the  
7 CLCS and remove its objection.

8  
9 Mr President, this brings me to the fifth and final part of my presentation; namely, the  
10 new questions of jurisdiction and admissibility that the Maldives has been forced to  
11 raise after the Judgment on Preliminary Objections. It is well established in the  
12 international jurisprudence that "the object of a preliminary objection is to avoid not  
13 merely a decision on but even any discussion of the merits".<sup>56</sup> Indeed, such  
14 objections are specifically "for the purpose of excluding an examination by the Court  
15 of the merits of the case." A respondent is "entitled to question the Court's  
16 jurisdiction over a claim prior to being called on to respond to the merits of that  
17 claim."

18  
19 The Maldives has been deprived of its fundamental procedural right to bifurcate  
20 proceedings under the ITLOS Rules; it cannot be forced to address the merits before  
21 the Special Chamber has decided the prior question of jurisdiction and admissibility.  
22 The principles of procedural fairness, with the greatest respect, are not mere  
23 suggestions. They cannot be trumped by considerations of judicial economy.

24  
25 There can be no doubt that, at the critical date in 2019, there was no dispute over an  
26 overlapping claim of 22,000 square kilometres in the outer continental shelf. Dr Hart  
27 will address this issue at greater length. There can also be no doubt that, at the  
28 critical date in 2019, Mauritius had not made its CLCS submission and that it made  
29 no reference whatsoever to the Northern Chagos Region when it filed its preliminary  
30 information in 2009 within the time limits fixed by UNCLOS States Parties. Professor  
31 Mbengue will have more to say on this issue.

32  
33 Another point of admissibility is Mauritius' manifest failure to make even a *prima*  
34 *facie* case to entitlement. It cannot be denied that the Gardiner Seamounts theory  
35 that it first introduced in its Reply and on which Dr Badal has elaborated, is  
36 diametrically opposed, not only to its Memorial and CLCS Preliminary Information,  
37 but also the bathymetric data in its own CLCS submission of 2022.

38  
39 There cannot be a first base of slope west of the Chagos Trough and then a second  
40 one to the east. Mauritius' CLCS submission is clear: the Chagos Laccadive Ridge is  
41 "bounded to the east by the Chagos Trough",<sup>57</sup> which extends north "from south of  
42 the Chagos Archipelago Region up to the equator around 0° and 1°N".<sup>58</sup> Those are

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<sup>56</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Preliminary Objections, Judgment, ICJ Reports 1964, p. 6 at p. 44.

<sup>57</sup> Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Executive Summary, Doc MCNS-ES-DOC, April 2022 (MRej, Annex 5), para. 8-2 (emphasis added).

<sup>58</sup> Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (MR, Annex 3), para. 2.3.1.2 (emphasis added).

1 the words of its own CLCS submission. In other words, there is an obvious  
2 morphological break throughout Mauritius' EEZ. It cannot establish natural  
3 prolongation beyond 200 nm to the critical foot of slope based on its landmass as  
4 required by article 76(3). It has accepted that it cannot do so by going north through  
5 the submerged prolongation of the Maldives' landmass well within the Maldives'  
6 200 nautical-mile limit.

7  
8 That is why the Gardiner Seamounts theory was invented at the final stage of these  
9 proceedings, to find another way of getting to the critical foot of slope point, through  
10 a most unusual detour, in flat contradiction with Mauritius' own admissions as to the  
11 correct location of the base of slope. That, Mr President, is how we arrived at this  
12 work of art that will by now be familiar to the members of the Chamber. It may not be  
13 fit for the Louvre, but we hope it is an adequate illustration of the point.

14  
15 What is fatal for Mauritius' case, is that there is no measured bathymetric data —  
16 none whatsoever — in the region of the Gardiner Seamounts. Without such data, its  
17 claim of natural prolongation is a mere assertion; the Commission would never  
18 accept such a claim. The CLCS Guidelines are clear that such data is required. I will  
19 be elaborating on this question tomorrow with particular reference to the sources of  
20 data that Dr Badal himself referred to as well, and on which both Mauritius and the  
21 Maldives have relied.

22  
23 Mr President, Mauritius is inviting you to make a judicial determination that will  
24 almost certainly be in contradiction with CLCS recommendations. Perhaps that  
25 explains the enthusiasm with which they have argued that there are no limits  
26 whatsoever to your jurisdiction; that you could do in a few weeks with an expert  
27 opinion what it takes the combined expertise of the CLCS several years to  
28 accomplish.

29  
30 Finally, Mr President, another compelling reason for the inadmissibility of Mauritius'  
31 new claim is its unprecedented approach of so-called "equal apportionment",<sup>59</sup> which  
32 necessarily requires this Chamber to delineate the outer limits of the Parties'  
33 potential entitlements; again, a task reserved for the CLCS. That supposed  
34 methodology finds no support whatsoever in the jurisprudence, even if Mauritius had  
35 entitlement *quod non*. That is why it invites you to dispense Solomonic justice, *ex*  
36 *aequo et bono*, but only for the outer continental shelf. It is a creative argument, but  
37 not one that can be taken seriously. Ms Sander will address this matter further.

38  
39 Mr President, even if there were no questions of jurisdiction and admissibility, and  
40 bifurcation was not at issue, there would still be compelling reasons to have a  
41 second phase to properly address scientific and technical evidence. The recent  
42 practice of the ICJ is instructive in this regard. You will of course be well aware that  
43 the legal issue underlying your second question on overlap between the EEZ and  
44 outer continental shelf of the Parties is pending before the ICJ, though as a matter of  
45 international customary law.

46  
47 I refer to *Question of the Delimitation of the Continental Shelf between Nicaragua*  
48 *and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v.*

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<sup>59</sup> MR, para. 4.25.

1 *Colombia*). In its recent Order of 4 October 2022, the Court decided to first hear the  
2 parties on questions of law “before proceeding to any consideration of technical and  
3 scientific questions”<sup>60</sup> regarding the delimitation of the outer continental shelf. The  
4 Court is no doubt addressing the fact that it would require significant resources for  
5 the Parties to produce proper technical and scientific evidence and expert testimony,  
6 and for the Court to consider the same in a proper hearing. The same consideration  
7 applies to the present case, irrespective of the questions of jurisdiction and  
8 admissibility that the Maldives has raised.

9  
10 Mr President, it is said that simplicity is the ultimate sophistication. This is attributed  
11 to Michelangelo, conjuring the image of Mona Lisa. It may not be as creative as  
12 Salvador Dalí’s *Persistence of Memory*, with its clocks drooping like melted cheese,  
13 what he called the “camembert of time”, but Michelangelo’s masterpiece is a great  
14 work of art that has withstood the test of time.

15  
16 The three-step methodology and principles of procedural fairness may not excite our  
17 passions in the same way, but they too have withstood the test of time. They have  
18 been the foundation of the consistency and objectivity that has reassured States that  
19 maritime boundary delimitation under the Part XV procedures is a reliable process  
20 with predictable results.

21  
22 The dispute within your jurisdiction is simply about four base points on Blenheim  
23 Reef. Equitable delimitation under UNCLOS articles 74 and 83 simply requires an  
24 equidistance line for the Parties’ entitlements within 200 nm, without those four base  
25 points; and it requires continuation of the equidistance line from point 46 by a  
26 directional line to the outer limits of the continental shelf following the  
27 recommendations of the CLCS.

28  
29 Mr President, distinguished Members of the Special Chamber, that concludes my  
30 introductory remarks. I thank you for your patience and ask that you call Professor  
31 Thouvenin to the podium, unless you wish to take a break at this point.

32  
33 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Akhavan. Although  
34 we have not reached 11.30 yet, if Mr Thouvenin prefers I will take a break of  
35 30 minutes, at this stage, and we will continue at 11.55 so that Mr Thouvenin can  
36 make his statement without being interrupted. We will withdraw for a break of  
37 30 minutes and we will continue the hearing at 11.55.

38  
39 (Break)

40  
41 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Please be seated. I now give the  
42 floor to Mr Thouvenin, to make his statement.

43  
44 **MR THOUVENIN** (*Interpretation from French*): Thank you very much, Mr President.

45  
46 Mr President, distinguished Members of the Special Chamber, it is an honour for me  
47 to appear before you once again in these proceedings. It is for me now to present

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<sup>60</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Order of 4 October 2022, p. 2.



1 the maritime delimitation line that you are to draw within the respective 200 nm. Your  
2 task will be primarily, as we will see, to construct the provisional equidistance line,  
3 and indeed it is extremely straightforward but, as we saw at the start of the week, the  
4 proceedings have been unfortunately complicated by Mauritius' claim that base  
5 points can be posed where they cannot be posed, quite simply off its coastline in the  
6 area around Blenheim Reef<sup>61</sup> and not on the terrestrial territory of Mauritius at the  
7 point where the terrestrial territory meets the sea, in other words, according to the  
8 law of the sea, on the relevant coast.

9  
10 Mauritius' argument does not hold water and in the coming minutes I shall  
11 demonstrate that the construction of the relevant provisional equidistance line cannot  
12 be allowed to take account of Blenheim Reef and none of the arguments put forward  
13 by Mauritius to convince you of the contrary are founded. I shall show, *inter alia*, that  
14 first of all nothing that it is above water at Blenheim Reef at low tide and which is  
15 completely below water at high tide can come under the heading of relevant coast of  
16 Mauritius for the purposes of maritime delimitation. In this area, which is more than  
17 10.6 nm from the closest island,<sup>62</sup> all we have are small low-tide elevations that are  
18 totally covered by the sea at high tide.

19  
20 Secondly, the relevant base points for the construction of the provisional  
21 equidistance line on the one hand and, on the other hand, the points unilaterally  
22 chosen by a coastal State in order to establish its baseline – and such State can be if  
23 necessary an archipelagic State – with a view to measuring the breadth of its  
24 territorial sea and its other maritime claims, should not be conflated. Consequently,  
25 Mauritius's claim to archipelagic baselines<sup>63</sup> has no relevance for the construction of  
26 the provisional equidistance line.

27  
28 Thirdly, no court and no tribunal has ever – and I underline – changed the coastal  
29 geography of a State such as to consider that a low-tide elevation, whatever type it  
30 may be, could be used in order to position a base point for the purposes of  
31 constructing the provisional equidistance line. On the contrary, courts and tribunals  
32 have always, let me say once again, always refused to place the basepoints on low-  
33 tide elevations. What you were told in this regard on Monday is quite simply inexact,  
34 and I shall say more later.

35  
36 These then are the main elements but not the sole elements of my demonstration,  
37 which will also lead me to answer the third question that was put by the Special  
38 Chamber, and I shall also respond to other arguments that were put forward on  
39 Monday.

40  
41 Let me say in passing that I shall not respond to all of the arguments that were  
42 developed on Monday, *inter alia*, the lengthy developments by our opponents as to  
43 the legality of the archipelagic baselines claimed by Mauritius,<sup>64</sup> nor Mauritius's  
44 criticisms of the Maldives' baselines.<sup>65</sup> As the Maldives has said repeatedly in its

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<sup>61</sup> Memorial of the Republic of Mauritius ("MM"), para. 4.29 and Table 4.1 (MUS-BSE-10–MUS-BSE-13).

<sup>62</sup> MM, para. 2.20.

<sup>63</sup> TIDM/PV.22/A28/1, p. 14 (lines 30–40) (Sands).

<sup>64</sup> TIDM/PV.22/A28/1, pp. 34–40 (Sands).

<sup>65</sup> TIDM/PV.22/A28/1, p. 40 (lines 9–12) (Sands).

1 written pleadings, aside from the question of the maximum extent of the Mauritius  
2 EEZ, the archipelagic baselines have absolutely no relevance whatsoever in this  
3 case.<sup>66</sup> What is more, and of course, the very fact of not responding to whatever  
4 argument does not mean that we are conceding the point.

5  
6 Mr President, I shall then methodologically go through the order, the logic and the  
7 rules of the three-step method of delimitation. As Mauritius recalled quite rightly,<sup>67</sup>  
8 and this is undoubtedly a point of agreement between the Parties, this three-step  
9 method means first of all we trace the provisional equidistance line. I shall do this in  
10 the second part of my pleading. Then there has to be verification of the relevant  
11 circumstances to see whether they require an adjustment of the provisional  
12 equidistance line. That will be part three of my pleading.

13  
14 Then verifying the lack of disproportionality between the ratio of the lengths of the  
15 relevant coasts and the ratio of the space in the relevant area that is attributed to the  
16 Parties. This will be the fourth and brief part of my pleading.

17  
18 To apply the three-step method that I have just summarized, as a preliminary we  
19 must first of all determine the relevant coasts. That is what I shall do in the first part  
20 of my pleading.

21  
22 Mr President, I shall be devoting this first part of my pleading to the determination of  
23 relevant coasts because this is a necessary element in the context of the first and  
24 the third step of the delimitation method. As indicated by the International Court of  
25 Justice in the *Maritime Delimitation of the Black Sea* case, and I quote:

26  
27 The role of relevant coasts can have two different though closely related legal  
28 aspects in relation to the delimitation of the continental shelf and the exclusive  
29 economic zone. First, it is necessary to identify the relevant coasts in order to  
30 determine what constitutes in the specific context of a case the overlapping  
31 claims to these zones. Second, the relevant coasts need to be ascertained in  
32 order to check, in the third and final stage of the delimitation process, whether  
33 any disproportionality exists in the ratios of the coastal length of each State  
34 and the maritime areas falling either side of the delimitation line.<sup>68</sup>

35  
36 Determining what the relevant coasts are for the purposes of the delimitation is  
37 therefore an important matter. Fortunately, the Parties are broadly in agreement as  
38 to their respective relevant coasts except, among other things, that Mauritius is  
39 claiming that part of its coast is located more than 10 nm off an island<sup>69</sup> at a place  
40 where, at high tide, all you can see is the sea. This claim is untenable. Firstly,  
41 constant jurisprudence that I shall invoke clearly stipulates that the relevant coasts  
42 are made of a meeting of terrestrial territory in the sea.

66 Rejoinder of the Republic of Maldives (“DM”), paras. 63, 67.

67 TIDM/PV.22/A28/1, p. 16 (lines 35–40) (Sands).

68 *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61, para. 78; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624, para. 141.

69 Reply of the Republic of Mauritius (“RM”), paras. 1.41.5.

1 Secondly, at Blenheim Reef, nothing of what is on a daily basis conquered by the  
2 high-sea tides – and I was actually going to say dominated by the sea at high tide –  
3 can contribute to determination of the relevant coast of Mauritius.

4  
5 So everything begins with the positioning of the relevant coasts because it is they  
6 that determine maritime claims and they alone. It is on these relevant coasts, once  
7 they have been determined, that the relevant base points can be located, thus  
8 making it possible to draw the provisional equidistance line.

9  
10 This method is not at all arbitrary but nor is it purely mathematical and it is even less  
11 so contingent upon any software.<sup>70</sup> I do not believe, Mr President, and of course I am  
12 speaking under the control of Maldives, that the Special Chamber should concede in  
13 the face of any given software. The positioning of base points is a legal process and  
14 reflects the iron law that determines certain entitlement to a continental shelf and in  
15 its extension to an Exclusive Economic Zone. This rule seems to be perceived by our  
16 opponents as something that they can ignore because they state that land  
17 dominates the sea<sup>71</sup> – yes, land dominates the sea.

18  
19 The very fact of saying so does not allow you to get around it. The important thing is  
20 not to state it. What is important before the Special Chamber is to know that it is the  
21 law that ordains, in other words, land does dominate the sea.

22  
23 This basic rule has been recalled on a number of occasions. In the case of the  
24 *Continental Shelf of the Aegean Sea*, the International Court of Justice underscored,  
25 and I quote, “and it is solely by virtue of the coastal State’s sovereignty over the land  
26 that rights of exploration and exploitation in the continental shelf can attach to it, *ipso*  
27 *jure*, under international law.”<sup>72</sup>

28  
29 In the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* the Court recalled once  
30 again as regards the entitlement of the coastal State to the continental shelf:

31  
32 The geographic correlation between coast and submerged areas off the coast  
33 is the basis of the coastal State’s legal title. [...] As has been explained in  
34 connection with the concept of natural prolongation, the coast of the territory  
35 of the State is the decisive factor for title to submarine areas adjacent to it.<sup>73</sup>

36  
37 In *Qatar v. Bahrain* once again the Court underscored: “In previous cases the Court  
38 has made clear that maritime rights derive from the coastal State’s sovereignty over  
39 the land, a principle which can be summarized as “the land dominates the sea  
40 [...]”<sup>74</sup>

41  

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<sup>70</sup> TIDM/PV.22/A28/2, p. 1 (lines 25–29) (Reichhold).

<sup>71</sup> TIDM/PV.22/A28/1 p. 42 (lines 19–20) (Sands).

<sup>72</sup> *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, p. 3, para. 86.

<sup>73</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, para. 74.

<sup>74</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, p. 40, para. 185; *North Sea Continental Shelf (Federal Republic of Germany/Denmark, Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3, para. 96; *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, I.C.J. Reports 1978, p. 3, para. 86.

1 I continue the quotation:

2

3 It is thus the terrestrial territorial situation that must be taken as a starting point  
4 for the determination of the maritime rights of a coastal State. In accordance  
5 with article 121, paragraph 2, of the 1982 Convention on the Law of the Sea,  
6 which reflects customary international law, islands, regardless of their size, in  
7 this respect enjoy the same status, and therefore generate the same maritime  
8 rights, as other land territory.<sup>75</sup>

9

10 I have taken the liberty of underscoring in this quotation the terms “terrestrial territory  
11 situation” and “land territory” or “*terra firma*” because these are key terms that define  
12 the nature of the relevant coasts from which the land dominates the sea, in other  
13 words, as of where the competing maritime claims and the claims to the EEZ can be  
14 established.

15

16 What dominates the sea is the terrestrial territory, in other words, the mainland, and  
17 more generally speaking *terra firma*, which includes the islands.

18

19 Clearly, below-tide elevation in no way makes up the terrestrial territory or *terra firma*  
20 and cannot be taken into account for the relevant coast of a State. The arbitral award  
21 in the *South China Sea* case is crystal clear here:

22

23 (*Continued in English*)

24

25 [L]ow-tide elevations do not form part of the land territory of a State in the legal  
26 sense. Rather they form part of the submerged landmass of the State and fall  
27 within the legal regimes for the territorial sea or continental shelf, as the case  
28 may be.<sup>76</sup>

29

30 (*Interpretation from French*)

31

32 Thus below-tide elevations in the area around Blenheim Reef and where Mauritius is  
33 insistently proposing to the Special Chamber that the basepoints<sup>77</sup> should be placed  
34 must be set aside as it does not belong to the relevant coast of Mauritius for the  
35 purposes of delimitation.

36

37 I will come back to Blenheim Reef shortly but as of now I can note that the Parties  
38 are in agreement that the features that are above water at low tide are one or several  
39 low-tide elevations.<sup>78</sup>

40

41 Mr President, distinguished Members of the Special Chamber, by stating that there is  
42 nothing in common between a low-tide elevation and terrestrial or island territory  
43 which is sole in defining relevant coasts for the purposes of delimitation, I am of

---

<sup>75</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, p. 40, para. 185; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 689, para. 176; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, para. 113.

<sup>76</sup> *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, p. 132, para. 309.

<sup>77</sup> TIDM/PV.22/A28/1, p. 15 (lines 30–31); p. 18 (lines 5–7) (Sands).

<sup>78</sup> DM, para. 2(c).

1 course not setting aside what is provided for under article 13 of the Convention, and  
2 all the more so as regards what Mauritius is reading into that article<sup>79</sup> to have you  
3 accept that certain low-tide elevations situated within the area of Blenheim Reef are  
4 relevant for its relevant coastline, but this is, again, an untenable position.  
5

6 So in substance, what Mauritius has claimed or what it started by claiming in its  
7 Memorial<sup>80</sup> is that article 13 transforms the low-tide elevations within the limit of the  
8 territorial sea into terrestrial territory capable of dominating the sea.  
9

10 This interpretation of article 13 is devoid of legal basis. Article 13, which you are  
11 familiar with, reads as follows:  
12

13 1. A low-tide elevation is a naturally formed area of land which is surrounded  
14 by and above water at low tide but submerged at high tide. Where a low-tide  
15 elevation is situated wholly or partly at a distance not exceeding the breadth  
16 of the territorial sea from the mainland or an island, the low-water line on that  
17 elevation may be used as the baseline for measuring the breadth of the  
18 territorial sea.  
19

20 2. Where a low-tide elevation is wholly situated at a distance exceeding the  
21 breadth of the territorial sea from the mainland or an island, it has no  
22 territorial sea of its own.<sup>81</sup>  
23

24 Mauritius had suggested,<sup>82</sup> admittedly implicitly, that paragraph 2 of article 13 should  
25 be read *a contrario* as stating that when low-tide elevations are within the 12 nm limit  
26 of the territorial sea, they have their own territorial sea. That is incorrect. In reality the  
27 low-tide elevations within the 12 nm zone from the closest coast do not, in  
28 themselves, generate any entitlement. What generates entitlement is the terrestrial  
29 territory, the *terra firma*, located on mainland or on an island. Article 13, paragraph 1  
30 quite simply fixes the possible position of the baseline as of which the extension of  
31 the territorial sea can be calculated. It does certainly not transform the low-tide  
32 elevations into a coast and even less so into a relevant coast within the meaning of  
33 the law on the delimitation of the continental shelf and the Exclusive Economic Zone.  
34

35 Apparently Mauritius has set aside this argument set out in its Memorial in favour of  
36 a brand new one on Monday, when this time around it made a strong connection  
37 between article 13, paragraph 1 and article 5 of the Convention.  
38

39 Listening to them, I wondered whether this was a trick or a solid argument.<sup>83</sup> Let us  
40 take a closer look. Article 5 stipulates: “Except where otherwise provided for by the  
41 Convention the normal baseline as of which the breadth of the territorial sea is  
42 measured is the low-water line along the coast.”<sup>84</sup>  
43

44 Article 13 – we have read it – on the contrary provides that the baseline may follow  
45 the low-water line on a low-tide elevation in certain cases.

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<sup>79</sup> TIDM/PV.22/A28/1, p. 20 (lines 39-47; p. 21 (lines 1–25) (Parkhomenko).

<sup>80</sup> MM, para. 2.20.

<sup>81</sup> United Nations Convention on the Law of the Sea (“UNCLOS”), 1989, art. 13.

<sup>82</sup> MM, para. 2.20.

<sup>83</sup> TIDM/PV.22/A28/1, p. 24 (lines 3–4) (Parkhomenko); p. 33 (lines 19–23) (Sands).

<sup>84</sup> UNCLOS, art. 5.

1 Mauritius implies that because both articles refer to the low-water line and because  
2 article 5 says that the low-water line is along the coast, article 13 must be read as  
3 stating and stipulating that the low-water line of an LTE is also the coast. That is not  
4 the case.

5  
6 On the one hand, article 13 is, as provided for by article 5, something that does  
7 provide otherwise in Convention, which under certain conditions allows the normal  
8 baseline not to be on the low-water line along the coast but on a low-water line of an  
9 LTE. So when taking the two texts together, it is not demonstrated that the low-water  
10 line of an LTE is the coast, but on the contrary, that an LTE is not the coast.  
11 Otherwise article 13.1 would have no useful effect.

12  
13 On the other hand, the Special Chamber will be struck by the fact that in the text of  
14 article 13, which mentions the LTEs, there is no use made of the term “coast”; it just  
15 is not there. Article 13 says nothing that can be compared to what is stated in  
16 article 11, which I will now quote: “For the purpose of delimiting the territorial sea, the  
17 outermost permanent harbour works which form an integral part of the harbour  
18 system are regarded as forming part of the coast.”

19  
20 Mauritius seems to be reading into article 13 what you actually find in article 11, as if  
21 article 13 were stipulating that, for the purpose of delimiting the territorial sea, a low-  
22 tide elevation situated in the territorial sea is regarded as forming part of the coast.  
23 But of course that is not what article 13 says, no more so than article 5. It is therefore  
24 quite simply a trick with no legal basis.

25  
26 Clearly, what applies to the LTEs, which cannot be seen as being part of the relevant  
27 coast, applies also to the drying reefs because, as agreed by the Parties, these  
28 drying reefs are quite simply a category of low-tide elevation. A drying reef is defined  
29 by the glossary of the Office for Ocean Affairs and Law of the Sea of the United  
30 Nations as, I quote, “part of the reef which is above water at low tide but below water  
31 at high tide.”<sup>85</sup>

32  
33 A drying reef is thus a low-tide elevation. Its only specificity is linked to its  
34 geomorphological nature. Thus, Mr President, distinguished Members of the Special  
35 Chamber, the conclusion that must be drawn from the constant jurisprudence that I  
36 have recalled is crystal clear: the relevant coasts that define the maritime rights of a  
37 coastal State are none other than the coasts of the States concerned. Those coasts  
38 are defined as being at the limit between terrestrial territory and the sea.

39  
40 Clearly, it is in contradiction with what is established by law which our opponents are  
41 insisting on this point, to propose that coastal be reinvented and that, for the  
42 purposes of constructing the provisional equidistance line, that the relevant coast for  
43 Mauritius includes the LTEs within the area of Blenheim Reef. Such an argument is  
44 totally without merit.

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<sup>85</sup> “Reef” in Office for Ocean Affairs and Law of the Sea, “Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea”, 1989, p. 60, [https://www.un.org/depts/los/doalos\\_publications/publicationtexts/f\\_88v5\\_baselines\\_highres.pdf](https://www.un.org/depts/los/doalos_publications/publicationtexts/f_88v5_baselines_highres.pdf) accessed on 11 October 2022.

1 Let me now explain what Blenheim Reef is. Blenheim Reef is, for the main part, a  
2 below-water reef at both high and low tides; in other words, the major part of the  
3 surface area of Blenheim Reef is an underwater feature. In a study published in 2021  
4 by the Khaled Bin Sultan Living Oceans Foundation, Blenheim Reef moreover is  
5 presented as “ a small submerged atoll”.<sup>86</sup> You can now see on the screen in the left-  
6 hand image Blenheim Reef at high tide. You see nothing. It is blue. That is perfectly  
7 normal. That is how we represent the sea on charts of this nature.

8  
9 I know, Mr President, that Mauritius prefers to describe Blenheim Reef as being at  
10 mean sea level.<sup>87</sup> This concept of mean sea level was made much of in this very  
11 room on Monday<sup>88</sup> as if it were relevant for the purposes of the UN Convention on  
12 the Law of the Sea. It is not, as clearly stated by the Arbitration Tribunal in the *South*  
13 *China Sea* case, and I quote:

14  
15 *(Continued in English)* “Mean sea level is not a high-water datum, and this therefore  
16 offers no assistance in determining the appropriate datum for ‘high tide’ for the  
17 ‘purposes of articles 13 and 121.’”<sup>89</sup>

18  
19 *(Interpretation from French)*

20  
21 Let me say once again that at high tide within the meaning of article 13 of the  
22 Convention, Blenheim Reef is precisely what you see on the left of the screen: the  
23 sea. At low tide, as you can see on the image to the right, there is a very small  
24 surface area of Blenheim Reef that is an outcropping to form a series of what the  
25 Convention refers to as low-tide elevations. According to the Geodetic Survey of  
26 Blenheim Reef produced by Mauritius in its Reply the description of what we have  
27 just seen on the right-hand side of the screen would be

28  
29 *(Continued in English)* “a low tide elevation with sizeable areas of drying reefs found  
30 primarily along the eastern, northern, and western flanks of the Blenheim’s most  
31 seaward perimeter.”<sup>90</sup>

32  
33 This description is both inaccurate and also devoid of relevance. It is inaccurate  
34 because, firstly, Blenheim Reef in law is not “a low-tide elevation”. As I have already  
35 said, Blenheim Reef as such is, for the most part, a submerged reef, or below water.

36  
37 In the Blenheim Reef zone at low tide there are a few LTEs and, as the Maldives  
38 said in their Rejoinder<sup>91</sup> and again this morning, we are talking about 57 LTEs that  
39 are separated at low-tide by expanses of sea.

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<sup>86</sup> Khaled bin Sultan Living Oceans Foundation, “Global Reef Expedition: Chagos Archipelago”, 24 February 2021, p. 22, <https://www.livingoceansfoundation.org/wp-content/uploads/2021/02/Chagos-Archipelago-Final-Report.pdf>, accessed on 18 October 2022.

<sup>87</sup> ITLOS/PV.22/C28/1, p. 7 (line 21) (Dabee).

<sup>88</sup> TIDM/PV.22/A28/1, p. 13 (lines 14–19, 37); p. 14 (line 27) (Sands).

<sup>89</sup> *South China Sea Arbitration (Philippines v. China)*, Award on the Merits, 12 July 2016, p. 134, para. 313.

<sup>90</sup> Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (RM, Annex 1), p. 3.

<sup>91</sup> DM, para. 5(b).

1 To gain certainty about this – and we are talking about several LTEs, and not one  
2 single one – we just need to look at the legal definition of an LTE. As we know, this  
3 definition says that it is a natural elevation of the terrain that is surrounded by the sea  
4 that is above water at low tide and above water – below water at low – at high tide.<sup>92</sup>  
5 So in law each of the 57 LTEs that are apparent at low tide – I am sorry: each one of  
6 these 57 elevations is a single LTE because each one is surrounded by the sea at  
7 low tide, which is the only relevant legal criterion. Therefore, there are several LTEs  
8 in the zone and not one single one, contrary to what Mauritius is at great pains to  
9 have you believe.

10  
11 On this point, you heard on Monday Mauritius state with great confidence that if  
12 several natural elevations of the terrain that appear at low tide belong to the same  
13 submerged reef, then it is a single low-tide elevation. Not only is this statement  
14 coming out of nowhere, but in fact it flies in the face of article 13. Let us test this  
15 statement.

16  
17 Let us imagine that a feature that is comparable to Blenheim Reef, which you see  
18 here on your screen, would allow only two natural elevations appearing at low tide –  
19 one at the northernmost and the other one in the south, with a stiff distance between  
20 of 10 km – would we say that these two protuberances that are separated by about  
21 11 km distance would constitute a single LTE? Of course not. Would it be different,  
22 in other words, should one consider that there is only one single and unique LTE if  
23 the distance between the two emerging points was less? What would be the  
24 criterion, then – 5 km, 3 km, 500 m, 50 m? Perhaps our friends can enlighten us on  
25 the figures they see in article 13 of the Convention; but in the meantime it is apparent  
26 to anyone considering the matter that the only criterion that distinguishes one LTE  
27 from another is the fact that at low tide they are both separated by the sea.

28  
29 We also heard on the facts on Monday that “the depiction of 57 separate maritime  
30 features is merely the number of exposed parts of the same feature at a particular  
31 point in time. It is meaningless.”<sup>93</sup>

32  
33 The Special Chamber will note that our opponents have counted, just as we have,  
34 that there are 57 separate maritime features, but they claim that it is meaningless.<sup>94</sup>  
35 I believe this to be true. Whether there are one or 57 LTEs has absolutely no impact  
36 on the construction of the provisional equidistance line. This is simply a red herring.  
37 But, if our opponent means by this, when he uses the word “meaningless”, that there  
38 are not 57 LTEs, I cannot agree because that number was established in reference  
39 to the situation as it exists at the lowest possible tide, that is to say at the  
40 astronomical minimal tide, contrary to what you heard on Monday.

41  
42 Our opponents have also claimed: “Another photograph taken an hour later might  
43 show a different number, less or more.”<sup>95</sup> Of course, the appearance of the sea  
44 changes with the tides, but what matters is the situation at low tide, as is stated  
45 expressly in article 13 of the Convention; and this is the situation that reveals 57

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<sup>92</sup> UNCLOS, art. 13(1).

<sup>93</sup> ITLOS/PV.22/C28/1, p. 24 (lines 21–23) (Parkhomenko).

<sup>94</sup> *Ibid.*

<sup>95</sup> ITLOS/PV.22/C28/1, p. 24 (lines 23–24) (Parkhomenko).



1 different outcrops – and 57, of course, is the maximum since the sea cannot go any  
2 lower than it is at low tide; and, as we know, today the sea level is tending to rise.

3  
4 It is true that the number goes down as the tide rises until there are none left  
5 because at high tide, the whole area is covered by the sea. However, this has no  
6 consequence on the fact that at low tide, there are 57 low-tide elevations.

7  
8 The second inaccurate element in the presentation that Mauritius gives of Blenheim  
9 Reef is that the zones where we have LTEs that are visible at low tide do not cover  
10 vast areas. The description of the geodetic survey is, furthermore, irrelevant because  
11 knowing whether these LTEs are also dry reefs has no consequence on the  
12 construction of the provisional equidistance line. The latter must always refer to  
13 basepoints that are situated on the land territory; and this is not the case with  
14 features that are covered by the sea at high tide. In the category of LTEs, dry reefs  
15 are distinguished only by their geomorphological specific features; and, as the  
16 International Court of Justice said in the *Black Sea* delimitation case regarding a  
17 sandbar: “The geomorphological features of the peninsula and its possibly sandy  
18 nature have no bearing on the elements of its physical geography which are relevant  
19 for maritime delimitation.”<sup>96</sup>

20  
21 What holds true for a sandy feature is just as true for a reef or any other  
22 geomorphological feature; its geophysical characteristics are irrelevant when it  
23 comes to a maritime delimitation that only relies on geographical considerations.

24  
25 Mr President, as I am pointing out the inaccuracies in the presentation that Mauritius  
26 has made of Blenheim Reef, it is necessary to say that contrary to what Mauritius  
27 said in its Memorial<sup>97</sup> – namely that the LTEs were dry reefs situated in the area of  
28 Blenheim Reef and part of the Solomon atoll – in fact, the low-tide elevations in the  
29 Blenheim Reef area are absolutely not part of the Solomon Islands because they are  
30 not connected to these islands. This is where the *Qatar v. Bahrain* case, which our  
31 opponents are inexpertly trying to use against us,<sup>98</sup> is irrelevant.

32  
33 The Special Chamber will recall that in this case the International Court of Justice  
34 took a special interest in Fasht al Azm, a submerged maritime feature at high tide but  
35 partially above water at low tide. Fasht al Azm is here on your screens in green. The  
36 Court had to consider whether this feature was connected to the closest island at low  
37 tide; that is the island of Sitra that you see in yellow, because in this case then the  
38 base points could have been placed on the eastern tip of Fasht al Azm. This is what  
39 Bahrain was advocating. One can well understand the rationale. If this was, indeed,  
40 the prolongation at low tide of landmass, the low -water line would then be the low-  
41 water tide of the coast of the island. If, on the contrary, this feature was not  
42 connected to the closest island but separated by a channel at low tide, making it in  
43 this case just an LTE that would be independent from the island, then it could not be  
44 used to place a base point – and that was Qatar’s argument.

96 *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009,  
p. 105, para. 129.

97 MM, para. 2.20.

98 TIDM/PV.22/A28/1, p. 28 (lines 12–22) (Parkhomenko).

1 All of this is fairly straightforward, and one fails to understand why counsel for  
2 Mauritius showed us on Monday a map illustrating the fact that Fasht al Azm is  
3 located less than 12 nm from Qatar.<sup>99</sup> This is indeed true; but Qatar was not at all  
4 claiming that Fasht al Azm belonged to Qatar; they view it as an LTE, and that is  
5 what they were claiming in order to place its baseline there.

6  
7 Qatar was arguing for a delimitation that was mainland-to-mainland, an approach  
8 that is no doubt familiar to this Special Chamber; and had absolutely no intention of  
9 placing its baseline for the purpose of building the equidistance line on or at the top  
10 of Fasht al Azm.

11  
12 What you were shown on Monday is, therefore, irrelevant.

13  
14 The question before the Court was not to know to which country Fasht al Azm  
15 belongs; it was to know whether the low-water line of Fasht al Azm could be  
16 considered as being the coast of the island of Sitra belonging to Bahrain. Let me  
17 illustrate this. You can see on the diagram – and I have asked that we enlarge one  
18 part of it – a channel between Fasht al Azm in green and the island of Sitra in yellow.  
19 The red circle that you see simply shows where the channel is.

20  
21 The Court was uncertain as to the existence of this channel at low tide up until an  
22 artificial channel was dug – which it was not going to take into consideration. What is  
23 important for us is that it considered that, if this channel existed at low tide, then  
24 Fasht al Azm could not be considered as being part of the island; it would only be an  
25 LTE. It would not be part of the coast and therefore could not be used for a  
26 basepoint.

27  
28 The Court then drew two lines matching the two assumptions: the assumption where  
29 Fasht al Azm would be connected to the island and the other assumption where it is  
30 not connected to the island. Assuming that Fasht al Azm is an integral part of the  
31 island of Sitra, the median line as drawn by the Court (on the next slide) is what you  
32 see here on this map, which is a faithful reproduction of what was included in the  
33 Court judgment. We did not copy it because it is not a very fine map, but this  
34 reproduces faithfully its elements.

35  
36 As we see very distinctly, a series of basepoints that are on the eastern tip of Fasht  
37 al Azm, which is considered here as the low-water line of the relevant coast, a  
38 basepoint which makes it possible to draw the median line that you see here, is the  
39 dotted line.

40  
41 According to the Court, in the event where Fasht al Azm is only an LTE – and we  
42 can go back to the previous slide – as we can see, the equidistance line would be  
43 what we see on your screen. As we can see, no base point is on Fasht al Azm; it has  
44 been disqualified for this purpose not because both parties wanted to place their  
45 baselines there, because only Bahrain wished to do so, but only because it is an LTE  
46 that is not part of the coast of the island of Sitra.

47  

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<sup>99</sup> Mauritius' Judges files, (Parkhomenko-1) Figure 25.

1 This is what the Maldives has recalled in its pleadings,<sup>100</sup> and what holds true for  
2 Fasht al Azm holds true *a fortiori* for Blenheim Reef. It is materially impossible to  
3 consider that what is submerged at low tide at Blenheim Reef is connected in any  
4 fashion whatsoever to one of the surrounding islands. The closest island is over  
5 10 nm away.

6  
7 I might add that, in application of the Fasht al Azm jurisprudence, and as common  
8 sense dictates, the fact that various LTEs located in the Blenheim Reef area are  
9 separated at low tide by channels shows that they cannot be viewed or considered  
10 as a single LTE or a single dry reef. There are indeed 57 LTEs that are separated at  
11 low tide by channels. They are no more connected at low tide than was Fasht al Azm  
12 to the island of Sitra.

13  
14 As you can see on this diagram, on the left is an enlarged view of the southern tip of  
15 the image you see on the right. There are sea channels at low tide between the  
16 various low-tide elevations.

17  
18 Mr President, let me now finish with the inaccurate statements, at least as concerns  
19 Blenheim Reef. I would like to say again, to dispel any doubt – unlike what Mauritius  
20 seems to understand from a reading that is too superficial of Maldives’ submissions,  
21 referring erroneously to paragraph 64 in our Rejoinder<sup>101</sup> – the position of Maldives is  
22 not at all to claim that the basepoints on Blenheim Reef’s LTEs, as proposed by  
23 Mauritius for delimitation purposes, should be rejected because Blenheim Reef is not  
24 entirely located within the 12-nm limit of the closest island. This is not it at all.

25  
26 There is nothing in the submission of the Maldives that suggests such an argument.  
27 The Maldives considers that the matter of whether the few LTEs that I have just  
28 described are entirely or partially at more or less 12 nm from the closest island is  
29 irrelevant when it comes to determining what the relevant coasts are. The question is  
30 only of interest in order to calculate the breadth of the Mauritian EEZ – something  
31 that will be addressed by Ms Sander shortly.

32  
33 In summary, the LTEs that are located in the Blenheim Reef area are not the  
34 relevant coast, regardless of whether they constitute a whole or not and regardless  
35 of whether they are entirely or partially within the 12-mile limit from the closest island.

36  
37 All of this may appear obvious; but, Mr President, distinguished Members of the  
38 Special Chamber, since its Rejoinder, Mauritius has been attempting to claim that,  
39 because it is an archipelagic State, the applicable law for the purpose of delimitation  
40 is special.<sup>102</sup> It claims, in essence, that articles 47 to 49 of the Convention would  
41 have the effect of transforming the low-tide elevations that could support an  
42 archipelagic baseline into land territory or into an island; in other words into *terra*  
43 *firma* for the purposes of determining the relevant coast for the delimitation of the  
44 continental shelf in the EEZ.<sup>103</sup> You heard the same statements on Monday.

100 DM, paras. 28-29.

101 DM, para. 64.

102 RM, paras. 2.20–2.52.

103 RM, paras. 2.47–2.49.

1 Our opponents, after having reprimanded the Maldives at length for supposedly  
2 having read in such and such an article of the Convention something that is not  
3 there, they then said authoritatively, “[a] base point on a ‘drying reef’ used to  
4 construct an archipelagic baseline is properly also to be used for the purposes of  
5 delimitation. That is what Part IV says.”<sup>104</sup>

6  
7 But no, this is not what Part IV says; not at all. Article 47 provides that an  
8 archipelagic State may draw straight archipelagic lines joined to the outermost points  
9 of the outermost islands and drying reefs of the archipelago.

10  
11 Mauritius claims that this provision gives an extraordinary status to drying reefs,  
12 turning them into islands, not only for the purpose of formulating archipelagic lines  
13 but also for the purposes of delimitation.

14  
15 On Monday you heard the following:

16  
17 *(Continued in English)* “Article 47 draws no distinction at all between islands and  
18 drying reefs for the purposes of entitlements for delimitation.”<sup>105</sup>

19  
20 *(Interpretation from French)*

21  
22 With all due respect, this is incorrect on two scores: first of all, because, in fact, the  
23 Convention makes a fundamental distinction between islands and drying reefs. I fully  
24 understand that our opponents would simply like to forgo article 46, but it does exist.  
25 Article 46 says that an archipelago is a group of islands, interconnecting waters, etc.  
26 Article 46 does not say that an archipelago is made up of islands and drying reefs.  
27 Furthermore, drying reefs are, and this is something that everybody here seems to  
28 agree upon, also low-tide elevations, and article 47(4) says in crystal clear fashion  
29 that LTEs, thus drying reefs, since all drying reefs are low-tide elevations, cannot be  
30 used to draw the archipelagic baselines unless they are situated within the  
31 12 nautical mile limit of the closest island or if they contain certain installations.

32  
33 It flows from this that, contrary to what Mauritius would have you believe, article 47  
34 does not say, nor does it imply, that as regards archipelagic States a drying reef is  
35 like an island.<sup>106</sup> An island is an island. It has a coast. It can be used as a basepoint,  
36 an archipelagic base point, without being within proximity of another island. A drying  
37 reef is nothing more than a low-tide elevation that cannot be used to establish the  
38 archipelagic baseline, unless it is within the 12 nm limit. There is nothing there  
39 different to what is provided for, in substance, in article 13(1) of the Convention.

40  
41 I am aware that Mauritius has made great purchase of the fact that paragraph (1) of  
42 article 47 refers to drying reefs whereas paragraph (4) refers to low-tide elevations.  
43 But there is an obvious explanation to this because, as my opponent has often  
44 reiterated, not all LTEs are drying reefs.<sup>107</sup> Paragraph (1) is, therefore, deliberately  
45 more restrictive in its scope than if it were to make it possible for archipelagic States  
46 to place an archipelagic base point on any type of LTE. No, says article 47(4); only

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<sup>104</sup> ITLOS/PV.22/C28/1, p. 40 (lines 6-8) (Sands).

<sup>105</sup> ITLOS/PV.22/C28/1, p. 40 (lines 7-9) (Sands).

<sup>106</sup> TIDM/PV.22/A28/1, p. 8 (lines 27-31) (Dabee).

<sup>107</sup> TIDM/PV.22/A28/1, p. 16 (lines 22-23) (Sands).

1 some LTEs are eligible, specifically, those that can also be characterized as drying  
2 reefs. Nonetheless, because a drying reef is an LTE, article 47(4) is fully applicable.

3  
4 If this were not so, paragraph (4) would be deprived of any *effet utile*, since under the  
5 very terms of article 47(1) straight archipelagic lines can be drawn only by  
6 connecting the outermost points of the islands and drying reefs. Therefore, the  
7 Convention does not authorize or provide for the drawing of straight archipelagic  
8 lines to or from an LTE that is not a drying reef. Paragraph (4) applies, therefore,  
9 necessarily to drying reefs, otherwise it would lose its *effet utile*. Of course,  
10 paragraph (4) must have an *effet utile*, and for that to be so it must necessarily apply  
11 to drying reefs as low-tide elevations. This defeats Mauritius' arguments in response  
12 to question 3 put by the Members of the Special Chamber. Ms Sander, this  
13 afternoon, will develop these arguments.

14  
15 A reading of Part IV, as done by Mauritius, is inaccurate, secondly, because  
16 article 47 only addresses the archipelagic baseline; it says absolutely nothing about  
17 delimitation nor about the basepoints that are necessary to construct the provisional  
18 equidistance line in order to achieve delimitation of the continental shelf and the  
19 EEZ. Not only does article 47 say nothing about delimitation, it does not say either  
20 that the archipelagic baselines are deemed to be the relevant coast. It does not say  
21 this, contrary to what Mauritius would have us believe.

22  
23 Yet we must recognize that Part IV does talk about coasts when it intends to do so.  
24 Article 49, first of all, indicates that "the sovereignty of an archipelagic State extends  
25 to the waters enclosed by its archipelagic baselines in accordance with article 47  
26 regardless of their depth or distance from the coast." We do not read here  
27 "regardless of their depth or their distance from the archipelagic line". We do read,  
28 "regardless of their depth or their distance from the coast." This first element of  
29 context that is decisive shows that the coast is one thing and archipelagic baselines  
30 are something else.

31  
32 Article 50 then addresses the internal waters of archipelagic States and adverts to  
33 articles 9, 10 and 11. This is a second, decisive contextual element. As a reminder,  
34 article 11 stipulates that the outermost permanent harbour works are regarded as  
35 forming part of the coast. So the coast is the coast and not the archipelagic  
36 baselines that have been drawn in accordance with article 47.

37  
38 Along the same lines, Mauritius also places great emphasis on the fact that  
39 according to the terms of article 49, it is the archipelagic State which exercises  
40 sovereignty over archipelagic waters, air space, etc.<sup>108</sup> Mauritius then goes on to  
41 suggest that the archipelagic waters can be considered as the equivalent of land  
42 territory, but under article 2 of the Convention the coastal State that is not an  
43 archipelago exercises its sovereignty over its territorial sea, the airspace over the  
44 territorial sea, its seabed and its subsoil, without it meaning that the territorial sea is  
45 the same as land territory or that this limit could be deemed to be the coast.

46  
47 Article 48 on which Mauritius also relies says only that the breadth of the territorial  
48 sea, of the contiguous zone, of the EEZ and of the continental shelf is measured

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<sup>108</sup> TIDM/PV.22/A28/1, p. 41 (lines 38–44); p. 42 (lines 7–13) (Sands).

1 from the archipelagic baselines, but this says absolutely nothing about either what  
2 the coast is for the purpose of delimitation, nor about the delimitation of the  
3 continental shelf and the EEZ between adjacent or opposing states.

4  
5 Any attempt to read this article would require contorting its very terms. The only  
6 articles that are applicable to the delimitation of the continental shelf and the EEZ are  
7 articles 74 and 83, not article 48. Articles 74 and 83 make no distinction whether  
8 delimitation concerns one or several archipelagic states.

9  
10 Mr President, distinguished Members of the Chamber, based on the foregoing we  
11 must now establish the relevant coast for the purposes of this delimitation; that is the  
12 one that generates the competing rights. The Special Chamber will have read in the  
13 submissions that, aside from the question of Blenheim Reef, there is another  
14 controversy that has arisen between the Parties on the determination of the  
15 respective coasts where there are overlapping projections.<sup>109</sup>

16  
17 For Mauritius, the only coasts to be considered are those that have a frontal  
18 projection in the overlap zone.<sup>110</sup> For the Maldives, conversely, one has to consider  
19 the projection of coasts, both frontal and radial.<sup>111</sup> This controversy was reignited on  
20 Monday,<sup>112</sup> but it is pointless to debate this at length because the question is simply  
21 settled by jurisprudence and, particularly, the recent judgment of the International  
22 Court of Justice in the *Somalia v. Kenya* case, in which the Court has determined the  
23 relevant coast “using radial projections which overlap within 200 nautical miles.”<sup>113</sup>

24  
25 The respective coasts are, thus, for the Maldives, as you see in figure 20 of the  
26 Counter-Memorial of the Maldives.<sup>114</sup> This is a representation of the relevant coasts  
27 that generate projections, both frontal and radial, that overlap the projections of the  
28 coast from the Chagos Islands. For Mauritius, here is a visual representation of the  
29 relevant coasts that can be found in figure 21 of the Maldives’ Memorial.<sup>115</sup> The  
30 relevant zone in order to delimit respective maritime spaces within 200 nm is  
31 represented in the following fashion. You can see this on the screen and this is also  
32 defined in the Rejoinder.

33  
34 I would like to finish on this point, Mr President, by claiming that in this case the  
35 relevant coasts, such as they are defined in the law of maritime delimitation, do not  
36 include the submerged reef of Blenheim Reef. None of the LTEs that appear  
37 temporarily at low tide before disappearing below the water everyday can play any  
38 role whatsoever in the determination of relevant coasts. The fact that these LTEs can  
39 be qualified as drying reefs does not entail any consequences. The relevant coasts

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<sup>109</sup> *Maritime Delimitation in the Black Sea (Roumania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 97, para. 99; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, p. 46, para. 132.

<sup>110</sup> RM, paras. 2.59–2.61.

<sup>111</sup> DM, paras. 70–71.

<sup>112</sup> TIDM/PV.22/A28/2, p. 2 (lines 3242) (Reichhold)

<sup>113</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, p. 46, para. 137; see also *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 239.

<sup>114</sup> Counter-Memorial (“CMM”), p. 61.

<sup>115</sup> CMM, p. 63.

1 are those indicated in the Counter-Memorial of Maldives.<sup>116</sup> The length of the  
2 respective coasts is 39.2 km for the Maldives and 39.9 km for Mauritius.<sup>117</sup>

3  
4 Now we need to draw the equidistance line. As we know, the Parties do not agree on  
5 the situation of the basepoints from which the equidistance line should be  
6 constructed.<sup>118</sup> Let me start by looking at the position of Maldives with respect to the  
7 proposal made by Mauritius on where to put the base points on the LTEs in the  
8 Blenheim Reef area before showing you the equidistance line.<sup>119</sup>

9  
10 As I have already pointed out, in terms of delimitation of the continental shelf and the  
11 EEZ, basepoints established in order to construct the provisional equidistance line  
12 can only be on the relevant coasts, which I have just defined. There is no judicial  
13 precedent which can suggest the contrary. In order to attempt to get around this  
14 obstacle, Mauritius conflates the points used to draw the baselines, including  
15 archipelagic baselines, and the relevant points for delimitation. But the baseline  
16 points, including archipelagic base points, are not necessarily the relevant points for  
17 delimitation. That is what the Tribunal ruled in application of Annex VII of the  
18 Convention in the *Bangladesh v. India* case:

19  
20 (*Continued in English*)

21  
22 Low-tide elevations may certainly be used as baselines for measuring the  
23 breadth of the territorial sea.

24  
25 It does not necessarily follow, however, that low-tide elevations should be  
26 considered as appropriate base points for use by a court or tribunal in  
27 delimiting a maritime boundary between adjacent coastlines. Article 13  
28 specifically deals with the measurement of the breadth of the territorial sea. It  
29 does not address the use of low-tide elevations in maritime delimitations  
30 between States with adjacent or opposite coasts.<sup>120</sup>

31  
32 In the *Maritime Delimitation in the Black Sea* case, the ICJ also pointed out quite  
33 clearly that

34  
35 the issue of determining the baseline for the purpose of measuring the breadth  
36 of the continental shelf and the exclusive economic zone and the issue of  
37 identifying base points for drawing an equidistance/median line for the purpose  
38 of delimiting the continental shelf and the exclusive economic zone between  
39 adjacent/ opposite States are two different issues.

40  
41 In the first case, the coastal State, in conformity with the provisions of  
42 UNCLOS (articles 7, 9, 10, 12 and 15), may determine the relevant base  
43 points. It is nevertheless an exercise which has always an international aspect  
44 ... In the second case, the delimitation of the maritime areas involving two or  
45 more States, the Court should not base itself solely on the choice of base  
46 points made by one of those Parties. The Court must, when delimiting the

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<sup>116</sup> CMM, paras. 124, 125 and 130.

<sup>117</sup> CMM, para. 155; RM, para. 76.

<sup>118</sup> RM, para. 2.53.

<sup>119</sup> DM, para. 19.

<sup>120</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, p. 73–74, para. 260.

1 continental shelf and exclusive economic zones, select base points by  
2 reference to the physical geography of the relevant coasts.<sup>121</sup>

3  
4 In other words, it is the physical geography of the relevant coasts, it is not the  
5 baseline, which determines the position of the base points. The Tribunal for the Law  
6 of the Sea set the same jurisprudence in the *Delimitation in the Bay of Bengal* case:  
7 “The positioning of the base points in order to establish the equidistance line may not  
8 judicially refashion physical geography.”<sup>122</sup>

9  
10 The jurisprudence, in this respect, is settled and postulates that, unlike the baseline,  
11 which may in certain cases rely on drying reefs or low-tide elevations, the base  
12 points for the construction of an equidistance line must be located on the relevant  
13 coast and not elsewhere because physical geography may not be refashioned.

14  
15 In the *Nicaragua v. Colombia* case, the Court ruled, once again, in its judgment of  
16 2012, that it fell to it to

17  
18 [construct] a provisional median line between the Nicaraguan coast and the  
19 western coasts of the relevant Colombian islands, which are opposite to the  
20 Nicaraguan coast. This task requires the Court to determine which coasts are  
21 to be taken into account and, in consequence, what base points are to be used  
22 in the construction of the line. [...]

23  
24 As the Court noted in the *Maritime Delimitation in the Black Sea* case

25  
26 “In . . . the delimitation of the maritime areas involving two or more States, the  
27 Court should not base itself solely on the choice of base points made by one  
28 of those Parties. The Court must, when delimiting the continental shelf and  
29 exclusive economic zones, select base points by reference to the physical  
30 geography of the relevant coasts. (*Maritime Delimitation in the Black Sea*  
31 (*Romania v. Ukraine*), *Judgment*, *I.C.J. Reports 2009*, p. 108, para. 137.).<sup>123</sup>”

32  
33 The principle whereby the basepoints are selected by reference to the physical  
34 geography of the relevant coasts is, thus, established beyond any doubt. As I have  
35 already amply demonstrated, none of the low-tide elevations or drying reefs which  
36 emerge at low tide in the area around the Blenheim Reef area may be considered as  
37 being located on the relevant coast.

38  
39 Allow me to insist on this point, Mr President, on the wholly dispositive fact that case  
40 law has never, never derogated from this principle.

41  
42 If truth be told, in practice ,the question of whether a base point can be located on  
43 a low-tide elevation is one that has always arisen explicitly in territorial sea  
44 delimitation. The evident reason for this is that the law applicable to the delimitation

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<sup>121</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, *Judgment*, *I.C.J. Reports 2009*, p. 61, para. 137.

<sup>122</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment*, *ITLOS Reports 2012*, p. 4, para. 265.

<sup>123</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment*, *I.C.J. Reports 2012*, p. 624, para. 200; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment*, *ITLOS Reports 2012*, p. 4, para. 264.



1 of territorial sea flows from article 15 of the Convention. This sets out the very  
2 specific rule whereby in its relevant part:

3  
4 Where the coasts of two States are opposite or adjacent to each other, neither  
5 of the two States is entitled, failing agreement between them to the contrary,  
6 to extend its territorial sea beyond the median line, every point of which is  
7 equidistant from the nearest points on the baselines from which the breadth of  
8 the territorial sea of each of the two States is measured.<sup>124</sup>  
9

10 According to this text, the median line is drawn from the baselines. Now, the  
11 baselines may be drawn by the coastal States on the basis of different formulae, and  
12 these lines may lawfully rely on features which are not necessarily on dry land, as for  
13 example, certain low-tide elevations. The difference is striking between this and the  
14 law applicable to the delimitation of continental shelves in the EEZ.  
15

16 More specifically, the basepoints have to be on the relevant coasts; that means on  
17 the landmass. In terms of territorial seas delimitation the text of the Convention  
18 expressly says that the baseline plays a role, whereas this is precisely not the case  
19 when you look at the delimitation of the continental shelf and of the EEZ.  
20

21 Mr President, it is 12.59 on my watch. I can stop now, if you feel that is appropriate,  
22 or launch into the next paragraph. What do you think?  
23

24 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Thouvenin. I am  
25 sorry to interrupt you, but we have reached 1 o'clock, so this brings us to the end of  
26 this morning's sitting. You may continue in the afternoon. The hearing will be  
27 resumed at 3 p.m.  
28

29 *(The sitting closed at 1 p.m.)*

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<sup>124</sup> UNCLOS, art. 15.