

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2022

Public sitting

held on Thursday, 20 October 2022, at 3 p.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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*Mauritius is represented by:*

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

*as Agent;*

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

*as Co-Agent;*

*and*

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

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

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

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

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

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

*as Counsel and Advocates;*

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

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

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

*as Counsel;*

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

*as Adviser;*

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

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

*as Technical Advisers;*

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

*as Assistant.*

*Maldives is represented by:*

Mr Ibrahim Riffath, Attorney General,

*as Agent;*

*and*

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

*as Representatives;*

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

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

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

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

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

*as Counsel and Advocates;*

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

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

*as Technical Advisers;*

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

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

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

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

*as Assistants.*

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good afternoon. I give the floor to  
2 Mr Thouvenin to continue his statement on behalf of Maldives.

3  
4 **MR THOUVENIN** (*Interpretation from French*): Thank you, Mr President.  
5 Mr President, distinguished Members of the Special Chamber, I was explaining that  
6 no court or tribunal has placed a basepoint for the construction of an equidistance  
7 line on an LTE; never. I also said that in practice the question arose in the  
8 delimitation of territorial seas and I explained that it is clear why: because  
9 article 15 of the Convention expressly states that the median line is established in  
10 relationship with the baselines. Of course, the baselines can be positioned on LTEs.

11  
12 At that moment I was going to tell you that this is remarkable because, even when  
13 tasked with a delimitation of a territorial sea and in spite of article 15, judges have  
14 never accepted that a basepoint for the construction of the median line of the  
15 territorial sea, they have never placed them on a low-tide elevation, LTE.

16  
17 I already touched upon this point in the *Qatar v. Bahrain* case and I am not going to  
18 revisit it now. The arbitration of the *Bay of Bengal* is also illuminating. The tribunal in  
19 that case ruled that a maritime feature where it was uncertain whether it was an LTE  
20 or a permanently submerged reef – now, what does it say? The award says in the  
21 clearest possible fashion – I am reading it here –

22  
23 (*Continued in English*)

24 Breakers observed in that area did signal the existence of a feature,  
25 although it was not apparent whether the feature was permanently  
26 submerged or constituted a low-tide elevation. In any event, whatever  
27 feature existed could in no way be considered as situated on the coastline,  
28 much less as a “protuberant coastal point”, to use the expression of the  
29 International Court of Justice. In the opinion of the Tribunal, South  
30 Talpatty/New Moore Island is not a suitable geographical feature for the  
31 location of a base point.<sup>1</sup>

32  
33 (*Resumed in French*) In the maritime delimitation in the *Black Sea* case, the ICJ has  
34 been very clear as to the criteria which are referred to in the *Bay of Bengal*  
35 arbitration award which I have just quoted refers to. In every case the basepoints, as  
36 I have already said and I repeat it again, have to be located on the relevant coasts.  
37 In paragraph 117 of its judgment the Court says, and I quote a part of it:

38  
39 The equidistance and median lines are to be constructed from the most  
40 appropriate points on the coasts of the two States concerned. ... The line  
41 thus adopted is heavily dependent on the physical geography and the most  
42 seaward points of the two coasts.<sup>2</sup>

43  
44 In paragraph 127 the Court once more underscored the fact that

45  
46 [i]n this stage of the delimitation exercise, the Court will identify the  
47 appropriate points on the Parties’ relevant coast or coasts ... . The points

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<sup>1</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, p. 4, para. 261.

<sup>2</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 101, para. 117.

1 thus selected on each coast will have an effect on the provisional  
2 equidistance line that takes due account of the geography.<sup>3</sup>

3  
4 Coasts – only the coasts are eligible to – in other words basepoints may thus only be  
5 located on the coast. I also referred to the *Somalia v. Kenya* case where the ICJ  
6 refused to place basepoints on LTEs. You heard on Monday that the Court took this  
7 decision to avoid giving too much effect to small maritime features having a  
8 disproportionate effect on the law.<sup>4</sup> It is true that is what the Court said, but the Court  
9 said it only regarding the delimitation of the territorial sea.

10  
11 From this flow two noteworthy points. First of all, even though Somalia had the right  
12 to say that the baseline ran by the LTE at issue, and that is in article 15 of the  
13 Convention, where it provides that the median line is calculated from the baseline,  
14 the Court took no account of this LTE even though it was located at less than 12 nm  
15 from the coast.

16  
17 Secondly, when choosing the basepoints for the delimitation of the continental shelf  
18 and the EEZ, in a separate exercise from that which the Court carried out in the  
19 delimitation of the territorial sea, the Court did not even find it necessary to explain  
20 why it did not retain the point located on the LTE proposed by Somalia, considering  
21 by its very pregnant silence that the proposition was irrelevant.

22  
23 I note *en passant* that Somalia claimed, very much like our colleagues on the other  
24 side, that reliance should be placed on CARIS LOT software.<sup>5</sup> Well, this was  
25 something that the Court evidently did not do regarding the LTE, doubtless because  
26 the Court knows more about the law than the CARIS LOT software.

27  
28 In its Reply<sup>6</sup> and during the first round of oral pleadings, Mauritius sought refuge in  
29 *Barbados v. Trinidad and Tobago* and yet, in that case there was no question of  
30 LTEs. For the [Special Chamber] to be fully convinced of this, here are some images  
31 of the maritime features in issue, and you can see the different basepoints, T1 to 4,  
32 and here you can see a maritime chart showing exactly where those points are, T1  
33 to the east and T2, T3, T4 moving northwards. You can now see on screen an  
34 enlarged extract of the chart just shown, with point T4, and T2 and T3 here; you will  
35 see T4 as well.

36  
37 Let me go through very quickly here. There is no problem here. Each of the points  
38 here cited by the tribunal in that case for delimitation are all on islands, islands and  
39 more islands. However, this notwithstanding, on Monday, counsel for Mauritius put  
40 the following reason to you. It matters little that there was, yea or nay, a drying reef  
41 or an LTE in this case. As the basepoints for the construction of the provisional  
42 equidistance line retained by the arbitral tribunal were the basepoints of the  
43 archipelagic baseline of Trinidad and Tobago, one has to conclude that, had the  
44 archipelagic line been drawn by Trinidad and Tobago using a drying reef, the tribunal

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<sup>3</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 105, para. 127.

<sup>4</sup> TIDM/PV.22/A28/1, p. 30 (lines 10–17) (Parkhomenko).

<sup>5</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, p. 51, para. 143.

<sup>6</sup> RM, paras. 2.50–2.52.

1 would have automatically used this drying reef as a basepoint for delimitation. Then  
2 our opponents suggested that the arbitrators in this case would necessarily consider  
3 that pursuant to article 47 a drying reef is like an island for purposes of delimitation.  
4

5 Mr President, Members of the Special Chamber, this is all conjecture and proves  
6 nothing for Mauritius given first there was no drying reef in issue in this case;  
7 second, neither of the Parties in this case claimed that by virtue of article 47 a drying  
8 reef is like an island; and thirdly, the tribunal certainly did not consider that the  
9 archipelagic baseline had to be taken when considering a choice of basepoints. My  
10 opponent seems to think that paragraph 333 of the arbitral award proves him right<sup>7</sup>  
11 but actually it is paragraph 334 of the award which decides the matter:  
12

13 *(Continued in English)*

14 [B]aselines [, which] are only a method to facilitate the determination of the  
15 outer limit of the maritime zones in areas where the particular geographical  
16 features justify the resort to straight baselines, archipelagic or otherwise.<sup>8</sup>  
17

18 *(Resumed in French)* This arbitration in other words does not support Mauritius' line  
19 of argument, no more so, moreover, than this other attempt based on the judgment  
20 of 2022 handed down in the second case, *Nicaragua v. Columbia*. Triumphantly, our  
21 opponents told us on Monday that the judgment of 2022 demonstrates that, even if  
22 the International Court of Justice ruled that the Edinburgh Reef had not been proved  
23 to be an island, the Court in 2012 nonetheless  
24

25 *(Continued in English)*

26 placed a base point on the same low-tide elevation for delimitation  
27 purposes, and used it to construct the provisional equidistance line  
28 between Nicaragua and Colombia.<sup>9</sup>  
29

30 *(Resumed in French)* Mr President, for the case file I note here an interesting and  
31 innovative piece of factual information which my apparently very well informed  
32 opponent may be kind enough to provide the source for, since he stated it<sup>10</sup> to his  
33 advantage before you, namely that Edinburgh Reef is a low-tide elevation.  
34

35 This information is not in the case file of the instant case and, as far as I know, it is  
36 not in the public domain either. What we do know from the reading of the judgment  
37 of the Court is simply what the Court judged, namely that Nicaragua had not proved  
38 to the Court that Edinburgh Reef was an island.<sup>11</sup> Maybe it is an island, maybe it  
39 isn't, maybe it's a low-tide elevation – maybe it does not even appear above the  
40 surface of the sea. The judgment says nothing else. So since our opponents are  
41 revealing information before you that they judge crucial for their line of argument  
42 whereby Edinburgh Reef is indeed a low-tide elevation, they have to give the source  
43 of that information, unless of course their assertion is baseless – but let me not jump  
44 the gun on what will be said tomorrow. We will hear it well. We will see.  
45

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<sup>7</sup> ITLOS/PV.22/C28/1, p. 40 (lines 27-28) (Parkhomenko).

<sup>8</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, p. 102, para. 334.

<sup>9</sup> ITLOS/PV.22/C28/1, p. 29 (lignes 23-25) (Parkhomenko).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment of 21 April 2022, p. 86, para. 251.

1 Let us just suppose that Edinburgh Reef is a low-tide elevation and not an island. So  
2 why would the Court put a basepoint for the construction of the provisional  
3 equidistance line on it? A short history of Edinburgh Reef will help you understand. In  
4 the case *Nicaragua v. Honduras*, Nicaragua managed to convince the Court that  
5 Edinburgh Reef, situated about 20 nm from its coast, was an island. During the oral  
6 pleadings Honduras expressed doubts<sup>12</sup> but since they could not prove the contrary  
7 they gave in and agreed that Nicaragua should be given the benefit of the doubt as  
8 to the existence of this island. On that basis the Court characterized Edinburgh Reef  
9 as an island with a territorial sea<sup>13</sup> and drew the maritime delimitation between  
10 Nicaragua and Honduras taking due account of what it had been told was an island.

11  
12 Subsequently in the first case, *Nicaragua v. Colombia*, which was concluded by the  
13 judgment of 2012, Colombia did not think of questioning Edinburgh Reef being an  
14 island as the Court had recognized as such in 2007. Nicaragua also apparently  
15 relied on the judgment of the Court, and it is on that basis that the Court once again  
16 ruled that Edinburgh Reef was an island and as such considered it appropriate  
17 because it was an island, or at least the Court thought it was, to locate upon it a  
18 basepoint to establish the provisional equidistance line.<sup>14</sup>

19  
20 In the second case, *Nicaragua v. Colombia*, which was concluded by the judgment of  
21 2022, Colombia had a closer look to ascertain if, as the Court had indicated since  
22 2007, Edinburgh Reef really was an island. The Court recalled that

23  
24 the 2012 judgment refers to Edinburgh Reef as part of the islands and  
25 placed a basepoint on this feature for the construction of a provisional  
26 equidistance line.<sup>15</sup>

27  
28 But having heard the arguments of Colombia on the existence of serious doubts as  
29 to Edinburgh being an island, troubling arguments apparently, the Court ruled that

30  
31 the Court adopts the view that Nicaragua has not demonstrated the insular  
32 nature of this feature.<sup>16</sup>

33  
34 In other words, the Court ruled both in 2007 and in 2012 that a maritime feature, this  
35 maritime feature, was an island and as such found it expedient to grant it a territorial  
36 sea and to place upon it a basepoint for the construction of a provisional  
37 equidistance line, whereas in 2022 the Court found that after due reflection it was not  
38 certain at all that this feature was indeed an island.

39  
40 It may be that the Court was in error thinking that Edinburgh Reef was an island, as  
41 certainly what our opponents say today – that is what they said on Monday – they  
42 say it is a low-tide elevation. That is some information which they are duty-bound to

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<sup>12</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Rejoinder of the Honduras, para. 6.27.

<sup>13</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, paras. 262, 299, 303, 307, 320, 362.

<sup>14</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, pp. 698 – 699, para. 201.

<sup>15</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment of 21 April 2022, p. 86, para. 250.

<sup>16</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment of 21 April 2022, p. 86, para. 251.



1 communicate to the Special Chamber. But it is because the Court thought it was an  
2 island that the Court placed a basepoint upon it, so the key argument on Monday of  
3 our opponents came as a bit of a bombshell because finally Mauritius had apparently  
4 found some case law locating a basepoint on a low-tide elevation, yet it turned out to  
5 be a perfect misinterpretation.

6  
7 Mr President, distinguished Judges, when you consider, as positive international law  
8 requires, that none of the LTEs emerging in the Blenheim Reef area may host a  
9 basepoint for construction of the provisional equidistance line, then this construction  
10 poses no difficulty whatsoever since the Parties agree on all the other basepoints  
11 located on their relevant coasts.<sup>17</sup> The line constructed is consistent with  
12 international law and has been presented with a great deal of accuracy in the  
13 Maldives Rejoinder.<sup>18</sup> The Maldives maintain that it is the only provisional  
14 equidistance line that can be drawn in this case<sup>19</sup> and you can see how it looks on  
15 the screen.

16  
17 Mr President, distinguished Members of the Special Chamber, let us move on to the  
18 second step of the three-step process. First of all, we are clear that the line proposed  
19 needs no adjustment. In the extraordinary case where the Special Chamber might  
20 decide against what the Maldives claim and find that the line proposed by Mauritius  
21 should be upheld, then there will certainly be relevant circumstances requiring the  
22 line to be adjusted. Indeed, these low-tide elevations or drying reefs which are quite  
23 insignificant would exercise a disproportionate effect on the equidistance line, which  
24 would need to be corrected to eradicate any effect that these miniscule features  
25 might produce.

26  
27 Quite clearly, any disproportionality test relies on reference in this case. As Maldives  
28 indicated in paragraph 152 of their Counter-Memorial, what would be  
29 disproportionate would be to base the main part of the equidistance line on those  
30 LTEs proposed by Mauritius, which would be tantamount to apportioning almost  
31 4,700 km<sup>2</sup> of EEZ and continental shelf to small scattered features which disappear  
32 daily beneath the waves, rather than using Adoo Island in the Maldives.

33  
34 Moving on to the disproportionality test, the third step, none of the Parties has a  
35 problem with this so the Tribunal knows everything it needs to do in that regard.

36  
37 Moving on to my conclusion, Mr President, distinguished Members of the Special  
38 Chamber, the relevant coasts of Mauritius contain nothing which falls within the area  
39 of Blenheim Reef.<sup>20</sup> No basepoint for the construction of the provisional equidistance  
40 line can be located on one or more of the low-tide elevations in the Blenheim Reef  
41 area. The provisional equidistance line is such as presented by Maldives in their  
42 Rejoinder.<sup>21</sup> No relevant circumstance requires an adjustment of this provisional  
43 equidistance line.

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17 DM, para. 2(b).

18 DM, p. 32.

19 DM, para. 33.

20 DM, paras. 124, 125 and 130.

21 DM, para. 82.

1 However, supposing *quod non* that the line proposed by Mauritius were accepted,  
2 the fact that the basepoints would be located on LTEs situated in the Blenheim Reef  
3 area, and which are insignificant maritime features, and that these points would have  
4 a totally disproportionate effect on the line, should lead to this line being adjusted in  
5 order to wholly negate the effect that said LTEs would produce on that line.  
6

7 The unadjusted provisional equidistance line proposed by the Maldives generates no  
8 manifest disproportionality. It is thus the final delimitation line claimed by the  
9 Maldives.

10  
11 Mr President, distinguished Judges, thank you very much for your patience and I  
12 would like to ask you to invite to the podium Ms Sander.

13  
14 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to Ms Sander  
15 to make her statement. You have the floor, madam.

16  
17 **MS SANDER:** Mr President, Members of the Chamber, good afternoon. It is an  
18 honour to appear before you and to represent the Republic of Maldives in these  
19 proceedings.  
20

21 Professor Thouvenin has addressed the delimitation of the area where the Parties'  
22 respective EEZs and continental shelves within 200 nautical miles overlap. In this  
23 Chamber's Judgment on Preliminary Objections it referred also to "an overlap  
24 between the claim of the Maldives to a continental shelf beyond 200 nautical miles"  
25 (its OCS) and "the claim of Mauritius to an exclusive economic zone in the relevant  
26 area".<sup>1</sup> The purpose of this pleading is twofold. First, to confirm how that small area  
27 of "overlap" arises. In this part of my speech, I will address the second question  
28 posed by the Chamber on Sunday. Secondly, this pleading will confirm the Maldives'  
29 position with respect to the delimitation of that area, namely a continuation of the  
30 equidistance line.  
31

32 Turning first then to the small area of "overlap". As the Chamber is aware, in 2010  
33 the Maldives made a submission to the Commission on the Limits of the Continental  
34 Shelf.<sup>2</sup> That submission was made in a timely manner, in accordance with the time  
35 limits stipulated under UNCLOS, a matter which Professor Mbengue will address. In  
36 that submission the Maldives presented its claim as to the outer limits of the  
37 continental shelf where it extends beyond 200 nautical miles from its archipelagic  
38 baselines. That claim is based on the natural prolongation of its land territory,  
39 extending through its continental shelf to the outer limit of that continental shelf.  
40

41 I refer to the graphic now on your screen. This is a 3D view of the seafloor  
42 topography of the relevant area of the central Indian Ocean. The Chamber will see  
43 the Maldives Ridge indicated in purple shading to the north, with the Chagos Bank  
44 indicated in purple shading to the south. The critical foot of slope point, FOS-VIT31B,

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<sup>1</sup> *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>2</sup> "Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Republic of Maldives", 26 July 2010, Doc MAL-ES-DOC (Counter-Memorial of the Republic of Maldives ('MCM'), Annex 47).

1 is marked with a pink dot, with the extent of the Maldives' claimed OCS extending  
2 from that foot of slope point. The Chamber will see a large white arrow is marked on  
3 the graphic. That indicates the Maldives' direct and uninterrupted submerged  
4 prolongation, running from the island of Malé across the Laccadive Basin, to the  
5 north of where the Chagos Trough ends, coming to the foot of slope point.  
6

7 Mauritius does not dispute that the natural prolongation of the Maldives' land territory  
8 extends as claimed by the Maldives.<sup>3</sup> Mauritius has only protested the Maldives'  
9 submission, and I quote, "in as much as" the area claimed encroaches on the EEZ of  
10 Mauritius.<sup>4</sup> I refer there to its diplomatic note of 2011. That protest relates to the  
11 small area of overlap between the Maldives' OCS claim and Mauritius' EEZ identified  
12 by this Chamber to which I have referred and which is illustrated by the pink shading  
13 on the graphic now on the screen.  
14

15 If I may pause here to address the Chamber's second question of which there are  
16 two parts.  
17

18 The first part concerns the Parties' position with respect to the question of "whether  
19 the Maldives' entitlement to the continental shelf beyond 200 nautical miles from its  
20 baseline can be extended into the 200 nautical miles limit of Mauritius". As Professor  
21 Akhavan has already noted, the same point, articulated as a matter of general  
22 principle under customary international law, has been recently put by the ICJ to the  
23 parties in the pending *Nicaragua v. Colombia* case.  
24

25 In any event, turning to the specific facts of this case, the Maldives confirms its  
26 position that the Maldives' entitlement to the continental shelf beyond 200 nautical  
27 miles from its baseline can be so extended. The foot of slope point on which the  
28 Maldives relies in this regard is clearly within its 200 nautical mile limit and located  
29 on its side of the equidistance line (properly drawn).  
30

31 The second part of the Chamber's question concerns the Maldives' statement  
32 relating to a "rectification" regarding its CLCS submission, as recorded in the minutes  
33 of a 2010 meeting attended by Maldivian and Mauritian officials.<sup>5</sup> The Maldives'  
34 position is that this statement is not relevant to the question of whether the Maldives'  
35 OCS entitlement can extend into the 200 nautical mile limit of Mauritius.  
36

- 37 (a) The minutes simply record that at that meeting the Maldives acknowledged  
38 that the EEZ coordinates of Mauritius in the Chagos region had not been  
39 "taken into consideration", and that the Minister "assured the Mauritius side  
40 that this would be rectified by an addendum".<sup>6</sup>  
41

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<sup>3</sup> MCM, para. 175; Memorial of the Republic of Mauritius ("MM"), para. 4.61.

<sup>4</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).

<sup>5</sup> Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

<sup>6</sup> *Ibid.*

- 1 (b) The minutes provide no information as to what the “rectification” might  
2 comprise. Certainly, contrary to what Mauritius indicated on Monday, there is  
3 no record of the Maldives recognising as a matter of legal principle that it could  
4 not extend its OCS claim into the 200 nautical mile limit of Mauritius.<sup>7</sup>  
5
- 6 (c) But of course what is clear as a matter of legal principle is that a statement  
7 offered during inconclusive negotiations that fail to resolve interrelated issues  
8 cannot be taken into account. As the ICJ has stated, it “cannot take into  
9 account declarations, admissions or proposals which the Parties may have  
10 made during direct negotiations between themselves, when such negotiations  
11 have not led to a complete agreement.<sup>8</sup> And the negotiations did not lead to a  
12 “complete agreement”, nothing said in the meeting can be taken as reflective,  
13 let alone constitutive, of any legal obligation on the part of the Maldives.  
14
- 15 (d) Furthermore, to the extent that any rectification had to be made, it would be a  
16 rectification in accordance with international law. Indeed this seemed to be  
17 acknowledged by Mauritius in its submission on Monday in referring to a  
18 “recognition” by the Maldives of what it can and cannot do. And before this  
19 Chamber the Maldives has taken into account Mauritius’ EEZ coordinates and  
20 its delimitation is in accordance with international law, as I will explain.  
21

22 I turn back now to the small area of overlap between the Maldives’ OCS claim and  
23 Mauritius’ EEZ identified by this Chamber. On the screen now is a “zoomed in”  
24 depiction of that area of overlap.  
25

26 Looking at that graphic:  
27

- 28 (a) The red line depicts the equidistance line running from the left of the screen  
29 up to point 46. This was the delimitation line which Professor Thouvenin  
30 addressed in his speech.  
31
- 32 (b) The red line proceeds northeast from point 46 to point 47 *bis*. This is the outer  
33 limit of the Maldives’ 200 nautical mile entitlement, and thus the Maldives  
34 claims no EEZ beyond this point. So, insofar as their respective EEZs are  
35 concerned, this is where the boundary of the Parties lies.  
36
- 37 (c) The blue lines running to the point marked as 47 *bis* mark the Parties’  
38 respective 200 nautical mile claims, with point 47 *bis* indicating where  
39 Mauritius’ 200 nautical mile claim meets the Maldives’ 200 nautical mile claim.  
40

41 I pause here to note the location of point 47 *bis*.  
42

43 Following receipt of Mauritius’ Reply, it became clear to the Maldives that the 200 nm  
44 line of Mauritius needed to be adjusted southward, for reasons I will now explain.  
45

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<sup>7</sup> ITLOS/PV.22/C28/2, p. 21 (lines 20–26) (Loewenstein); ITLOS/PV.22/C28/2, p. 22 (lines 3–4) (Loewenstein).

<sup>8</sup> *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, at p. 51, cited with approval in *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 253 at p. 270, para. 54.

1 As noted by Professor Thouvenin, the classification of Blenheim Reef as falling  
2 within the definition of “low-tide elevations” in article 13 of UNCLOS is common  
3 ground. It is similarly uncontroversial that a drying reef, being that part of a reef  
4 “which is above water at low tide but is submerged at high tide”<sup>9</sup> is simply a type of  
5 low-tide elevation. And as Professor Akhavan has explained, Mauritius’ survey  
6 clarified that there are in fact a series of low-tide elevations at Blenheim Reef, not a  
7 single drying unit.

8  
9 The Chamber will recall that UNCLOS article 47, paragraph 4, expressly states that  
10 such archipelagic baselines shall not be drawn to and from low-tide elevations  
11 except in two circumstances. The first, relating to lighthouses or similar installations,  
12 is not relevant here. The second is if “a low-tide elevation is situated wholly or partly  
13 at a distance not exceeding the breadth of the territorial sea from the nearest island”.

14  
15 The key point here is that Mauritius had (erroneously) drawn its baselines from those  
16 low-tide elevations at Blenheim Reef located beyond 12 nm of Île Takamaka. It is  
17 with respect to those low tide elevations within 12 nm of Île Takamaka that, pursuant  
18 to UNCLOS article 47, paragraph 4, the breadth of Mauritius’ EEZ should be  
19 measured — and it is that line that the Maldives has depicted.

20  
21 Mauritius has advanced the position that with respect to the drawing of archipelagic  
22 baselines here, it is not article 47, paragraph 4, of UNCLOS that is relevant but just  
23 article 47, paragraph 1.<sup>10</sup> It is recalled that article 47, paragraph 1, provides that an  
24 archipelagic State may draw straight archipelagic baselines joining the outermost  
25 points of the outermost islands and drying reefs of the archipelago. So, says  
26 Mauritius, a State can draw baselines joining drying reefs with a zero distance  
27 constraint.

28  
29 The Maldives rejects that submission, as earlier explained by Professor Thouvenin. It  
30 is not what the text of article 47 says. The Virginia Commentary notes what, in the  
31 Maldives’ submission, is obvious: “drying reefs are ‘low-tide elevations’ within the  
32 meaning of article 13 and would be subject to the related requirement contained in  
33 article 47(4)”.<sup>11</sup> This authoritative commentary goes on to confirm that article 47,  
34 paragraph 4, limits the use of “low-tide elevations” as turning points from which  
35 baselines can be drawn, except in the two circumstances stated therein to which I  
36 have referred; and it concludes: “This provision [article 47(4)] is applicable to the  
37 ‘drying reefs’ referred to in paragraph 1.”<sup>12</sup>

38  
39 The mere fact that “drying reef” is a term referred to in article 47, paragraph 1, does  
40 not and cannot have a “strickethrough effect” with respect to article 47, paragraph 4,  
41 in circumstances where the features at issue are clearly low-tide elevations.

42  
43 Turning back to the graphic depicting the small area of overlap, I have just  
44 addressed the fact that point 47 *bis* indicates where Mauritius’ 200 nm claim meets

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<sup>9</sup> MR para. 2.47, citing Myron H. Nordquist, Satya Nandan, and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Volume 1 (1985) (‘UNCLOS Commentary’), p. 430.

<sup>10</sup> ITLOS/PV.22/C28/1, p. 34 (lines 18–26) (Sands).

<sup>11</sup> UNCLOS Commentary, p. 430 (para. 47.9(b)).

<sup>12</sup> UNCLOS Commentary, p. 431 (para. 47.9(f)) (emphasis added).

1 the Maldives' 200 nm claim. We also see the Maldives' OCS claim beyond Mauritius'  
2 200 nm limit is depicted in the pale pink shading in the north-east of the figure. So it  
3 is the purple shading that denotes the area of overlap identified by this Chamber in  
4 its preliminary objections judgment i.e. the overlap between the claim of the Maldives  
5 to an OCS and Mauritius' claim to an EEZ. I note for completeness that it is implicit in  
6 that Chamber's finding that Mauritius has a continental shelf claim in this purple area  
7 of overlap.<sup>13</sup> This purple area comprises just 516 square kilometres — about  
8 two-thirds the size of Hamburg; and it is to the delimitation of that purple area that I  
9 now turn.

10  
11 The Maldives' position is that the Chamber should simply continue a directional  
12 equidistance line to delimit that area of overlap.<sup>14</sup>

13  
14 This directional equidistance line is depicted on the graphic now on the screen.

15  
16 Looking at this graphic: the equidistance line up to point 46, as addressed by  
17 Professor Thouvenin, is depicted by the solid red line, with the dashed red line  
18 showing its continuation through the area of overlap that I am discussing. The  
19 Chamber will see that the line continues in yellow dash further to the east. For the  
20 avoidance of doubt, the purpose of that yellow dashed lined is simply to show how  
21 the proposed delimitation line, as a series of geodetic lines, was constructed with  
22 reference to a point "c" which is equidistant between the Parties' coasts. The yellow  
23 triangular shading denotes an area of some 272 square kilometres where the  
24 Maldives' OCS claim falls to the southern side of the equidistance line. On the  
25 Maldives' proposed delimitation, this yellow area of continental shelf would be  
26 granted to Mauritius.

27  
28 The "grey area" denotes a very small area of some 244 square kilometres north of  
29 the equidistance line where following the delimitation, the Maldives has continental  
30 shelf rights (by virtue of its OCS claim) and Mauritius has EEZ rights. So it is an area  
31 on the Maldives' side of the delimitation line, located beyond 200 nm from the coast  
32 of the Maldives but within 200 nm from the baselines (validly drawn) of Mauritius.<sup>15</sup>  
33 Consistent with the approach taken in the *Bay of Bengal* cases, in such  
34 circumstances a grey area may be identified.<sup>16</sup>

35  
36 That the equidistance line should be continued through this small area of overlap is  
37 supported by the following four factors.

38  
39 First, the Parties have expressly and repeatedly agreed that the three-step  
40 methodology should apply through the vast majority of the overlapping area within  
41 this Chamber's jurisdiction to delimit. Specifically, they have agreed that an  
42 equidistance line should be used with respect to the delimitation of the Parties'

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<sup>13</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 266.

<sup>14</sup> MCM, paras. 10, 178, 185.

<sup>15</sup> MCM, para. 188.

<sup>16</sup> *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 471–476; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 507–508.

1 maritime claims to an EEZ and their continental shelves within 200 nm.<sup>17</sup> And of  
2 course the delimitation of the additional area of overlap I am addressing is still within  
3 Mauritius' EEZ and continental shelf within 200 nm.

4  
5 Second, there is no basis in UNCLOS article 83 (concerning delimitation of the  
6 continental shelf) for a distinction to be made between delimitation of the Maldives'  
7 continental shelf within and beyond 200 nm.<sup>18</sup> And there is in law only a single  
8 continental shelf, a point Mauritius has itself recognized as "axiomatic".<sup>19</sup>

9  
10 Third, continuation of the equidistance line reflects the fact that there is, in practice, a  
11 presumption that the three-step methodology will apply to maritime delimitation  
12 grounded in the fundamental imperative to ensure transparency and predictability.  
13 As the Court framed it in *Somalia v. Kenya*, the question is whether there is a  
14 "reason in the present case to depart from its usual practice of using the three-stage  
15 methodology to establish the maritime boundary ... in the exclusive zone and on the  
16 continental shelf".<sup>20</sup> There is no such reason here.

17  
18 The Maldives of course recognizes that Mauritius has advanced certain additional  
19 arguments as to why the continuation of the equidistance line pursuant to the three-  
20 step methodology should not apply beyond 200 nm with specific reference to its  
21 claimed OCS which Mauritius says results in significant area of overlap between the  
22 Parties' respective OCS entitlements. Those arguments will be addressed in my  
23 submission tomorrow. I note here that the Maldives' firm position is that the OCS  
24 claim of Mauritius is beyond this Chamber's jurisdiction and otherwise inadmissible,  
25 so the present discussion is therefore only considering the small area of overlap  
26 identified by this Chamber between the Maldives' OCS and Mauritius' EEZ.

27  
28 Finally, the Chamber will have noted that it is a directional line that is indicated, as  
29 opposed to dictating a fixed end point. This is so the delimitation does not  
30 presuppose the precise delineation of the Maldives' OCS claim. Such delineation  
31 must await the recommendation by the CLCS, which is yet to be issued, a point  
32 relating to the role of that Commission which I will also elaborate in my second  
33 speech tomorrow.

34  
35 But in circumstances where there is no significant uncertainty with respect to an  
36 entitlement, ITLOS has recognized that the fact its entitlement's precise limits are not  
37 fixed is no bar to proceeding with a delimitation pursuant to the three-step  
38 methodology, including in relation to the third step of the disproportionality  
39 assessment.<sup>21</sup> Mathematical precision is not required in this regard,<sup>22</sup> and it is clear

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<sup>17</sup> MM, paras. 1.13, 4.2; MCM, paras. 9, 113, 184; Reply of the Republic of Mauritius ("MR"), para. 1.3a; Rejoinder of the Republic of the Maldives ("MRj"), paras. 2(a), 77.

<sup>18</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 121; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 454.

<sup>19</sup> MM, para. 4.67; MCM, para. 179.

<sup>20</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 131.

<sup>21</sup> *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 534.

<sup>22</sup> *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, at p. 123, para. 477; *Maritime Dispute (Peru v.*

1 that no such significant disproportion arises here.<sup>23</sup> Professor Thouvenin noted that  
2 there was no gross disproportionality arising from the equidistance line up to  
3 point 46, and the continuation of that line through this additional small area of  
4 overlap does not change that assessment.

5  
6 With many thanks for your kind attention, that concludes my present submission.  
7 I ask that you call Ms Shaany to the podium.

8  
9 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Sander. I give the  
10 floor to Ms Shaany to make her statement.

11  
12 **MS SHAANY:** Mr President, members of the Special Chamber, it is an honour to  
13 appear before you and to represent the Maldives in this matter.

14  
15 You have now heard the case advanced by the Maldives on what it considers should  
16 be the end of the matter, namely the delimitation of the Parties' exclusive economic  
17 zones and continental shelves within 200 nm and the additional small area of overlap  
18 between the EEZ of Mauritius and the outer continental shelf of the Maldives. With  
19 respect to the new claim to an outer continental shelf which Mauritius raised for the  
20 first time in the Memorial, the Maldives is firmly of the view that this claim is outside  
21 of this Chamber's jurisdiction and is otherwise inadmissible.

22  
23 This is therefore an apposite juncture for the Maldives to make certain observations,  
24 however, in the spirit of transparency and with a view to setting the record straight,  
25 as regards its cooperation in the survey conducted by Mauritius earlier this year.

26  
27 It was suggested by Mauritius on Monday that there has been a "change of tone" on  
28 the part of the Maldives in relation to cooperation with the survey.<sup>1</sup> In fact, there has  
29 been no change — only a consistent and good faith spirit of cooperation.

30  
31 The Maldives was disappointed to be informed in the Reply filed by Mauritius that  
32 Mauritius sought to recover compensation of some half a million euros towards the  
33 costs of the survey.<sup>2</sup> This claim was advanced on the basis that the Maldives  
34 allegedly failed to cooperate in facilitating the departure of the yacht chartered by  
35 Mauritius for the survey from the Maldivian port at Gan.<sup>3</sup> The Maldives welcomes the  
36 decision by Mauritius to withdraw that unwarranted claim. Unfortunately, the  
37 withdrawal was made only shortly before the hearing, and long after the Maldives  
38 has expended significant resources responding to that claim. In any event, at this  
39 point, the purpose of this speech is simply to explain the good faith efforts on the part  
40 of the Maldives to cooperate with Mauritius in relation to this survey, with reference  
41 to the contemporaneous written evidence.

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*Chile*), Judgment, I.C.J. Reports 2014, p. 3 at p. 69, para. 193; *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 238.

<sup>23</sup> *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 534.

<sup>1</sup> ITLOS/PV.22/C28/1, p. 11 (line 7) (Sands). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

<sup>2</sup> Reply of the Republic of Mauritius, ("MR"), Submission, p. 56.

<sup>3</sup> MR, Chapter 1, part II, pp. 4–10.



1 The Chamber will recall that Mauritius commenced these proceedings back in  
2 June 2019. The Chamber will also recall that in its Memorial in 2021, Mauritius had  
3 indicated its intention to conduct a survey in order “to confirm with precision the  
4 coordinates of base points along the low-water line of Blenheim Reef”.<sup>4</sup>  
5

6 The Maldives heard nothing further until, on 3 December 2021, after submission of  
7 the Counter-Memorial by the Maldives, the Permanent Mission of the Republic of  
8 Maldives to the UN in New York received a note from Mauritius informing it that  
9 Mauritius “will” carry out an “on-site scientific survey” of “Blenheim Reef, Salomon  
10 Islands and appurtenant waters”.<sup>5</sup> In that note, Mauritius “expresse[d] the hope that  
11 ... the Republic of Maldives would facilitate the departure of the vessel and Mauritius  
12 team from, and their return to, Gan when it undertakes the survey”.  
13

14 The Maldives responded to this request for assistance with respect to the survey  
15 within what was clearly a reasonable time and certainly as soon as was reasonably  
16 practicable. After receiving the original notification by Mauritius of its intention to  
17 conduct a survey, the Maldives conducted the normal process of sharing the request  
18 from Mauritius with the relevant government ministries with a view to coordinating a  
19 response, including compiling information on the precise course of action required to  
20 facilitate the departure of the survey vessel and its team from Gan. This was not an  
21 entirely straightforward issue. Gan is not an official sea port. This means that, as a  
22 matter of Maldivian law, it is necessary for a foreign vessel to obtain certain permits  
23 and approvals before docking there.<sup>6</sup>  
24

25 By 13 January 2022 the Maldives had expressly confirmed its willingness to “accede  
26 to Mauritius’ request” regarding facilitation of the departure of the vessel and the  
27 team from — and their return to — the port of Gan.<sup>7</sup> It has repeated that spirit of  
28 cooperation most recently in a letter dated 22 August 2022 from the President of the  
29 Maldives, directly inviting the Prime Minister of Mauritius to use the port of Gan for  
30 future visits to Chagos if he so wishes.  
31

32 Mauritius sent a letter to the Special Chamber on 13 January 2022 indicating that the  
33 Maldives had “not yet confirmed its willingness to facilitate Mauritius’ on-site  
34 survey”.<sup>8</sup> In fact, when the Maldives received this letter from Mauritius to the  
35 Chamber it had already sent its response to Mauritius, to which I have referred. The  
36 Maldives hoped that constructive engagement would then follow.  
37

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<sup>4</sup> Memorial of the Republic of Mauritius (“MM”), para. 1.11.

<sup>5</sup> Note Verbale from the Republic of Mauritius to the Republic of Maldives, 1 December 2021 (Rejoinder of the Republic of the Maldives (“MRej”), Annex 21).

<sup>6</sup> MRej, para. 145(a).

<sup>7</sup> Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (MRej, Annex 23).

<sup>8</sup> Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 12 January 2022, communicated to the Maldives by letter from the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (MRej, Annex 22).

1 Mauritius, however, raised two complaints to the Chamber,<sup>9</sup> neither of which had any  
2 foundation. It is those two complaints which I wish to address now to avoid any  
3 misunderstanding.

4  
5 The first purported basis related to the explanation by the Maldives that Mauritius  
6 would need to procure the “requisite permits and approvals” in order for its survey  
7 vessel to dock at Gan and its request that Mauritius inform it in advance of the  
8 specific individuals who would attend the survey and their technical role. This, so  
9 Mauritius says, constituted an unreasonable “condition”.<sup>10</sup> However, in its first letter  
10 of December 2021, Mauritius itself had expressly stated that it would provide the  
11 Maldives with “all relevant and necessary information” for the conduct of the survey.  
12 The request which the Maldives made for such information simply reflected the  
13 requirements of domestic law. It was set out in a spirit of full transparency to assist  
14 progression of the relevant authorisations. It was of course entirely consistent with  
15 the right of the Maldives, as a sovereign State, to regulate entry to its sea ports in  
16 accordance with its internal laws. In any event, to avoid any further escalation, the  
17 Maldives promptly sent a further letter – on 20 January 2022 – confirming that  
18 “lawyers and government officials whose presence is necessary on the survey were  
19 clearly included”<sup>11</sup> in the individuals it would allow to pass through Gan.

20  
21 The second purported basis of the complaint by Mauritius concerned the request of  
22 the Maldives that, prior to conducting the survey, Mauritius ensured that the  
23 “necessary clearances are acquired from the United Kingdom”.<sup>12</sup> The Maldives,  
24 continuing its spirit of good faith and transparency, clearly set out the reason for this  
25 request – namely its wish “to avoid any disruptions that might have negative  
26 implications for both countries”.<sup>13</sup> The Maldives of course takes note of this  
27 Chamber’s Judgment at the Preliminary Objections stage. However, as the Chamber  
28 is aware, the reality on the ground is that the United Kingdom continues to  
29 administer the territory.

30  
31 Evidently, Mauritius was also acutely aware of this reality and the need for  
32 precautions. Indeed, Mauritius had previously explained that the United Kingdom’s  
33 continuing administration of the Chagos Archipelago was the precise reason why it  
34 had not previously conducted a survey.<sup>14</sup> Further, Mauritius had itself engaged in  
35 direct communications with the United Kingdom, securing express assurances that  
36 its authorities would not impede the survey it intended to conduct in February 2022.<sup>15</sup>

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<sup>9</sup> Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (MRej, Annex 26); Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 8 February 2022 (MRej, Annex 28).

<sup>10</sup> MR, para. 1.13.

<sup>11</sup> Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (MRej, Annex 27).

<sup>12</sup> Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (MRej, Annex 23).

<sup>13</sup> *Ibid.*

<sup>14</sup> MM, para. 2.25.

<sup>15</sup> MRej, footnote 334, citing Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 12 January 2022, communicated to the Maldives by letter from the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (MRej, Annex 22), “‘I will be free’: excitement grows as cruise ship nears Chagos Islands”, *The Guardian*, 11 February 2022 <<https://www.theguardian.com/world/2022/feb/11/i-will-be-free-excitement-grows-as-cruise-ship-nears-chagos-islands>> accessed 5 August 2022 (MRej, Annex 33).

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In summary, it is clear from the relevant contemporaneous record that the Maldives was indeed entirely correct in its Rejoinder when it stated that it had fully cooperated in good faith with Mauritius with respect to its survey.<sup>16</sup> Again, the Maldives welcomes the spirit of cordiality which now prevails between the Parties on this matter.

I conclude by noting an important broader context to this issue.

Mr President, the Maldives is a small island developing State. It faces existential threats posed by rising sea levels induced by climate change. Resources to spend on litigation are limited.

The Maldives has at all times acted in good faith in its relations with Mauritius with whom it has always had strong bilateral relations. More recently, it has expressed its willingness to vote in favour of the General Assembly resolution concerning the ICJ's advisory opinion on the *Chagos Archipelago*, in view of the pending conclusion of these proceedings. It has also expressed its willingness to facilitate the visit of the Prime Minister of Mauritius to the Chagos Archipelago, having earlier done the same in respect of the survey. It has approached all aspects of these proceedings in good faith.

Mr President, Members of the Special Chamber. I thank you for your kind attention and for your courtesy in the conduct of these proceedings. May I ask that you call Ms Shabeen to address the Chamber.

**THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Shaany. I now call on Ms Shabeen to make her statement.

**MS SHABEEN:** Mr President, distinguished Members of the Special Chamber. It is an honour to appear before you today on behalf of the Republic of Maldives.

The claim before the Chamber concerns the Parties' entitlement to maritime spaces in the Indian Ocean. The Maldives, as an island nation, is critically dependent on the resources in the waters surrounding its territory. Aside from its cultural importance as an ancient seafaring nation, the ocean is crucial for the economy, the environment and the security of the Maldives. In this speech, I will address the Chamber on the relationship which the Maldives has with the marine environment: both its dependence on the ocean, and its sincere commitment to acting as a custodian of this precious resource by adopting sustainable practices. I will also address the recent proposal by Mauritius – welcomed by the Maldives – to create a multi-purpose Marine Protected Area (“MPA”) around the Chagos Archipelago.

As the Special Chamber is well aware, the Maldives is an archipelagic nation with some 1,190 coral islands.<sup>1</sup> Its population is scattered across some 200 of those islands.<sup>2</sup> To put the ocean's importance to the Maldives into perspective, one need only consider the following. The total land area across all of the islands of the

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<sup>16</sup> MRej, para. 149(iii).  
<sup>1</sup> Counter-Memorial of the Republic of Maldives (“MCM”), para. 15.  
<sup>2</sup> *Ibid.*

1 Maldives is some 227 square kilometres. However, this land territory is spread over  
2 a total maritime area within the archipelagic baselines drawn by the Maldives of  
3 more than 73,000 square kilometres.<sup>3</sup> These areas are shown in the figure now on  
4 the screen.

5  
6 Given the basic geography of the Maldives, it is of course not surprising that the  
7 ocean is an integral part of the life of the Maldivian people and the economy of our  
8 country. Tuna and other fish are one of the staples of the diets of ordinary  
9 Maldivians, going back centuries. The country's economy relies heavily on both  
10 fishing and ecotourism.<sup>4</sup> Accordingly, the Maldives has an important role – indeed  
11 duty – in protecting and sustaining this crucial natural environment.

12  
13 This duty is of such significance that it is expressly referred to in the Constitution of  
14 the Maldives. Article 22 states as: “The State has a fundamental duty to protect and  
15 preserve the natural environment, biodiversity, resources and beauty of the country  
16 for the benefit of present and future generations.”<sup>5</sup>

17  
18 Other legislation promulgated by the Maldives is equally forceful on this issue. For  
19 example, article 1 of the Environment Protection and Preservation Act of the  
20 Maldives states: “The natural environment and its resources are a national heritage  
21 that needs to be protected and preserved for the benefit of future generations.”<sup>6</sup>

22  
23 These have not been empty words. They have been matched by real-world action on  
24 the part of the Maldives to forge a sustainable and responsible fishing industry. The  
25 Maldives has already highlighted its leadership in this important area in its written  
26 pleadings,<sup>7</sup> and in this speech I wish to refer to just some of the most prominent  
27 examples.

28  
29 The Maldives has enacted a forward-looking Fisheries Act which governs all  
30 commercial fisheries.<sup>8</sup> This legislation forbids the use of chemicals, poisons and  
31 explosives in fishing.<sup>9</sup> It also prohibits any form of commercial net fishing,<sup>10</sup> which  
32 has made the Maldives a world leader in developing highly sustainable pole-and-line  
33 and handline techniques for fishing,<sup>11</sup> for which it has been awarded multiple  
34 sustainability certifications.<sup>12</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, para. 19.

<sup>5</sup> Constitution of the Republic of Maldives, 2008.

<<http://extwprlegs1.fao.org/docs/pdf/mdv136135.pdf>> accessed (MCM, Annex 7), article 22.

<sup>6</sup> Environment Protection and Preservation Act of the Maldives (Law No. 4/93, as amended by Law No. 12/2014) (MCM, Annex 8), article 1.

<sup>7</sup> MCM, paras. 20–22.

<sup>8</sup> Fisheries Act of the Maldives (Act No. 14/2019) <<https://www.gov.mv/en/files/fisheries-act-of-the-maldives.pdf>> accessed (MCM, Annex 11).

<sup>9</sup> *Ibid.*, s. 27(e).

<sup>10</sup> *Ibid.*, s. 27.

<sup>11</sup> Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, Report of the 23rd Session of the IOTC Scientific Committee, Doc IOTC–2020–SC23–R[E], 4 June 2021 <<https://www.ilotc.org/sites/default/files/documents/2021/06/IOTC-2020-SC23-RE.pdf>> accessed (MCM, Annex 13), pp. 68–69.

<sup>12</sup> Marine Stewardship Council, Track a Fishery, “Maldives pole & line skipjack tuna”, 29 November 2012 <<https://fisheries.msc.org/en/fisheries/maldives-pole-line-skipjack-tuna/>> accessed (MCM, Annex 15); Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission,

1  
2 The United Nations Food and Agriculture Organization has recognized the  
3 achievements of the Maldives in this area. In 2020, the Organization reported that  
4 pole-and-line fishery landed 99 per cent of the total skipjack tuna landings in the  
5 waters of the Maldives the previous year, and was also responsible for a significant  
6 portion of the total yellowfin tuna catches.<sup>13</sup> It proceeded to note as follows:

7  
8 Maldives pole-and-line and handline tuna fishery have minimal impact on  
9 the ecosystem. Catch and interactions with Endangered, Threatened and  
10 Protected (ETP) species and other species of ecological importance is  
11 virtually non-existent.<sup>14</sup>  
12

13 The Maldives has coupled this action in its domestic laws and practices with  
14 leadership in global and regional fora. By way of example, in 2021, the Maldives co-  
15 sponsored initiatives at the 25<sup>th</sup> annual session of the Indian Ocean Tuna  
16 Commission to protect the Indian Ocean yellowfin tuna<sup>15</sup> and skipjack tuna.<sup>16</sup>  
17

18 Climate change has added new urgency to the efforts on the part of the Maldives to  
19 protect the marine environment. As the Maldives has emphasized in its response to  
20 the International Law Commission's report on sea-level rise, there is a compelling  
21 need "for action by the international community" given the "severe impacts of sea-  
22 level rise on [small island developing States]".<sup>17</sup>  
23

24 In relation to climate change, the Maldives has again matched words with action. As  
25 long ago as 1989 it hosted the inaugural Small States Conference on Sea Level  
26 Rise, where 14 small island States signed the Malé Declaration on Global Warming  
27 and Sea Level Rise.<sup>18</sup> The following year it established the Alliance of Small Island

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"Structure of the Commission" <<https://iotc.org/about-iotc/structure-commission>> accessed (MCM, Annex 16).

<sup>13</sup> Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, Report of the 23rd Session of the IOTC Scientific Committee, Doc IOTC-2020-SC23-R[E], 4 June 2021 <<https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2020-SC23-RE.pdf>> accessed (MCM, Annex 13), p. 68.

<sup>14</sup> *Ibid.*, p. 69.

<sup>15</sup> Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, "On an Interim Plan for Rebuilding the Indian Ocean Yellowfin Tuna Stock in the IOTC Area of Competence (Maldives et al)", Doc IOTC-2021-S25-PropF-Rev2[E], 8 May 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropF\\_Rev2E\\_-\\_On\\_an\\_interim\\_plan\\_to\\_rebuild\\_the\\_yellowfin\\_tuna\\_stock\\_Maldives\\_et\\_al\\_cf\\_Res19-01\\_Rev2\\_0.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropF_Rev2E_-_On_an_interim_plan_to_rebuild_the_yellowfin_tuna_stock_Maldives_et_al_cf_Res19-01_Rev2_0.pdf)> accessed (MCM, Annex 17).

<sup>16</sup> Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, "On Harvest Control Rules for Skipjack Tuna in the IOTC Area of Competence (Maldives)", Doc IOTC-2021-S25-PropG\_Rev1[E], 8 May 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropG\\_Rev1E\\_-\\_On\\_HRC\\_rules\\_for\\_skipjack\\_tuna\\_Maldives\\_et\\_al\\_cf\\_Res16-02\\_Rev1.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropG_Rev1E_-_On_HRC_rules_for_skipjack_tuna_Maldives_et_al_cf_Res16-02_Rev1.pdf)> accessed (MCM, Annex 18).

<sup>17</sup> United Nations General Assembly, Sixth Committee, 75th session, 13th plenary meeting, 5 November 2020, Statement of the Maldives on Agenda Item 80: Report of the International Law Commission on the Work of Its Seventy-Second Session <[https://www.un.org/en/ga/sixth/75/pdfs/statements/ilc/13mtg\\_maldives.pdf](https://www.un.org/en/ga/sixth/75/pdfs/statements/ilc/13mtg_maldives.pdf)> accessed (MCM, Annex 27).

<sup>18</sup> MCM, para. 22.

1 States (“AOSIS”) and then, in 2009, it established the Climate Vulnerable Forum.<sup>19</sup>  
2 The Maldives remains deeply concerned about not only its own survival in the face of  
3 climate change, but also the fate of other climate-vulnerable States. This led it, in  
4 2019, to present a Climate Smart Resilient Islands initiative before the United  
5 Nations General Assembly.<sup>20</sup> The initiative, presented personally by President  
6 Ibrahim Mohamed Solih, is designed to provide “a replicable solution to combat  
7 climate change and provide sustainable development for Small Island Developing  
8 States.”<sup>21</sup> He encouraged other small island developing States to adopt parts of the  
9 model for themselves.<sup>22</sup>

10  
11 At the Conference of the Parties to the UN Framework Convention on Climate  
12 Change last year, the President of the Maldives called for collective action, noting:  
13 “Our islands are slowly being inundated by the sea. ... [W]e are determined to be  
14 part of global solutions to reverse these trends.”<sup>23</sup>

15  
16 As reflected in that statement of the President, the Maldives is keenly aware that  
17 effective responses to climate change rely fundamentally not on the actions of single  
18 States but on international cooperation, facilitated by international institutions. In this  
19 respect, the Maldives notes the initiative of the Commission of Small Island States  
20 on Climate Change and International Law to request an advisory opinion from ITLOS  
21 in relation to the protection and preservation of the marine environment. The  
22 Agreement establishing the Commission was concluded by Antigua and Barbuda  
23 and Tuvalu on 31 October 2021 at COP26 and, since then, the Republic of Palau  
24 and Niue have become States Parties, while other AOSIS members have also  
25 expressed interest in joining. The Maldives supports such initiatives and looks  
26 forward to ITLOS playing an important role in the global response to climate change.

27  
28 In its Counter-Memorial of 25 November 2021, the Maldives expressed its regret that  
29 Mauritius had not, at that time, undertaken any binding commitments concerning  
30 protection of the marine environment in and around the Chagos Archipelago. In  
31 particular, it had not indicated how it intended to comply with its obligations under  
32 article 64 of UNCLOS concerning the conservation and optimum utilization of highly  
33 migratory species, including tuna.<sup>24</sup>

34  
35 Following that expression of concern, on 1 July 2022, at the United Nations Ocean  
36 Conference in Lisbon, Mauritius publicly announced its intention to create a Marine

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<sup>19</sup> *Ibid.*

<sup>20</sup> Office of the President of the Republic of Maldives, “Press release: President presents Maldivian ‘Climate Smart Resilient Islands Initiative’ at UN Climate Action Summit as replicable and sustainable development model for SIDS”, 23 September 2019 <<https://presidency.gov.mv/Press/Article/22213>> accessed (MCM, Annex 31).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Office of the President of the Republic of Maldives. “President’s speeches: Remarks by His Excellency Ibrahim Mohamed Solih, President of the Republic of Maldives at the 26th Session of the Conference of the Parties (COP26) to the United Nations Framework Convention on Climate Change (UNFCCC) held in Glasgow, Scotland”, 1 November 2021 <<https://presidency.gov.mv/Press/Article/25643>> accessed.

<sup>24</sup> MCM, para. 25.

1 Protected Area (“MPA”) around the Chagos Archipelago.<sup>25</sup> Naturally, the Maldives  
2 welcomes this development and reiterates its commitment to cooperating with  
3 Mauritius with a view to protecting the marine resources of the Indian Ocean.  
4

5 Based on the available information, the MPA would delimit the Chagos Archipelago  
6 region into “conservation units on the basis of a multi-use zoning plan” and “a buffer  
7 limit around Diego Garcia will be maintained in view of the security installations  
8 there”. Furthermore, “[t]he Chagossians ... will have a key role to play as the future  
9 custodians of the MPA”.<sup>26</sup> Most recently, in his letter dated 23 September 2022,  
10 responding to the letter of the President of the Maldives dated 22 August 2022, the  
11 Prime Minister of Mauritius confirmed his interest “in undertaking joint measures to  
12 protect the marine environment of the Archipelago”.  
13

14 The Maldives welcomes these statements by Mauritius, and looks forward to  
15 receiving details of its MPA proposal. The Maldives is pleased that Mauritius  
16 recognizes the urgent necessity of preventing the catastrophic effects of  
17 industrialized fisheries in this fragile eco-system, on which the lives and futures of  
18 those with ancestral ties to this region depend.  
19

20 Mr President, the reality of sea-level rise only increases the imperative for the  
21 peoples of small island States to play a more active role in the protection of the  
22 marine environment. In this regard, there is considerable State practice and *opinio*  
23 *juris* on the fixing of base lines and maritime zones, irrespective of changes in  
24 coastal geography.  
25

26 In this respect, there are significant recent developments, such as the Declaration on  
27 Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise,  
28 adopted at the 51st meeting of the Pacific Islands Forum on 6 August 2021.<sup>27</sup>  
29

30 As small island States, the Maldives and Mauritius have an important role in  
31 affirming these principles of international law, and joining forces with a view to a  
32 future where they will play a continuing and ever-important role as custodians of  
33 these fragile ecosystems. ITLOS would contribute to that future by articulating  
34 authoritative statements of legal principles which will help the international  
35 community navigate the uncertainties arising from climate change.  
36

37 Mr President, I am confident that the Special Chamber has well in mind the  
38 significance of the present case for the Maldives, given its dependence on the ocean

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<sup>25</sup> Statement delivered by H.E. Mr. Jagdish D. Koonjul, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations, during the UN Oceans Conference held in Lisbon, Portugal, 29 June 2022 (Rejoinder of the Republic of Maldives, Annex 6).

<sup>26</sup> 2022 United Nations Ocean Conference Side Event “Protecting the Chagos Archipelago: Towards SDG-14, Sustainability and Self-Determination Through a New Marine Protected Area”, Organized by the Government of the Republic of Mauritius, 1 July 2022 <[https://sdgs.un.org/sites/default/files/2022-07/IBZ\\_Protecting%20the%20Chagos%20Archipelago-Towards%20SDG-14%2C%20Sustainability%20and%20Self-Determination%20Through%20a%20New%20Marine%20Protected%20Area.pdf](https://sdgs.un.org/sites/default/files/2022-07/IBZ_Protecting%20the%20Chagos%20Archipelago-Towards%20SDG-14%2C%20Sustainability%20and%20Self-Determination%20Through%20a%20New%20Marine%20Protected%20Area.pdf)> accessed.

<sup>27</sup> Pacific Islands Forum, Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, 6 August 2021 <<https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/>> accessed (MCM, Annex 29).

1 for its people's prosperity and wellbeing; indeed for their survival in the middle of the  
2 Indian Ocean.

3  
4 As I conclude my speech, the Maldives has addressed all aspects of the claim by  
5 Mauritius over which the Maldives considers the Special Chamber can and should  
6 exercise jurisdiction to delimit the maritime boundary. This is where the matter can  
7 and should end.

8  
9 However, Mauritius also seeks delimitation of what it alleges are the overlapping  
10 entitlements of the Parties to a continental shelf beyond 200 nm from their respective  
11 coasts. As far as the Maldives is concerned, there are several reasons why this  
12 aspect of the claim is beyond the Special Chamber's jurisdiction and is, in any event,  
13 inadmissible. The members of the delegation of the Maldives who will now address  
14 the Chamber in turn will deal with these matters.

15  
16 Mr President, I would now ask that you give the podium to Dr Naomi Hart. Thank  
17 you.

18  
19 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Shabeen. I now  
20 give the floor to Ms Hart to make her statement. You have the floor.

21  
22 **MS HART:** Mr President, distinguished Members of the Special Chamber, it is an  
23 honour to appear before you today as Counsel for the Republic of Maldives. I will  
24 address the Chamber on Mauritius' claim of entitlement to a continental shelf beyond  
25 200 nm (an "outer continental shelf" or "OCS"), first made in its Memorial in  
26 May 2021. Specifically, I will address the Chamber's lack of jurisdiction over this part  
27 of Mauritius' claim.

28  
29 My colleagues will subsequently address the matters which, in addition to this lack of  
30 jurisdiction, render Mauritius' OCS claim inadmissible.

31  
32 The Chamber already held in its judgment on preliminary objections that

33  
34 for it to have jurisdiction *ratione materiae* to entertain a case, "a dispute  
35 concerning the interpretation or application of the Convention between the  
36 Parties must have existed at the time of the filing of the Application."<sup>1</sup>

37  
38 Those final words are key: the dispute must have crystallized prior to proceedings  
39 having commenced.

40  
41 In the present case, there is one simple and incontrovertible fact which means that  
42 Mauritius has not satisfied this mandatory jurisdictional precondition. When Mauritius  
43 commenced these proceedings in June 2019, it had never claimed an OCS  
44 entitlement which overlapped with the claimed entitlement of the Maldives, and had  
45 never – really never – suggested a delimitation line of the kind it now seeks. Plain

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<sup>1</sup> *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, 28 January 2021 ("Judgment on Preliminary Objections"), para. 322, citing *M/V "Norstar" (Panama v. Italy)*, Preliminary Objections, Judgment, 4 November 2016, p. 65, para. 84 and *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, 28 May 2013, p. 46, para. 151.



1 and simple, there was no disagreement or positive opposition of views on this issue.  
2 Instead, as identified by the Chamber in its judgment,<sup>2</sup> the only overlap involving any  
3 OCS entitlement was the overlap between the Maldives' claimed OCS and Mauritius'  
4 exclusive economic zone ("EEZ") and thus its continental shelf within 200 nm. In  
5 defining the dispute before this Special Chamber, that Judgment made no reference  
6 to a claim by Mauritius to an OCS – which was natural, as no such claim existed.

7  
8 That is the beginning and the end of Mauritius' claim for delimitation of the Parties'  
9 overlapping OCS claims.

10  
11 However, after the judgment on preliminary objections, Mauritius has sought to bring  
12 an entirely new OCS claim into the proceedings which was never notified to the  
13 Maldives, much less the subject of a dispute, prior to the Memorial. It is essential not  
14 to lose sight of the magnitude of this new claim. It is a claim for 22,000 square  
15 kilometres. It enlarges the area supposedly in play by more than 20 per cent. For  
16 more than 10 years, the Maldives claimed this area as part of its own OCS without  
17 any competing OCS claim by Mauritius. This new claim is not trivial. It is not  
18 subsumed or implicit within the dispute which the Chamber recognized at the  
19 Preliminary Objections phase. A simple question illustrates the point: did any of the  
20 distinguished Members of this Chamber expect that they would need to resolve such  
21 a dispute two years ago? On this side of the bar, nobody did.

22  
23 My speech has three parts. First, I will address the evidential record relevant to  
24 Mauritius' new claim. Secondly, I will address the requirements of a dispute as the  
25 foundation of the Special Chamber's jurisdiction, although the Chamber is already  
26 well acquainted with these uncontentious principles. Thirdly, I will explain why  
27 Mauritius' claim for delimitation of the Parties' overlapping OCS claims very  
28 obviously does not conform to these requirements.

29  
30 First, the essential facts relating to Mauritius' OCS claim. It is important to go through  
31 the documents carefully. On Monday, Professor Klein sought to portray the Parties'  
32 exchanges as greatly varying in their wording, with the result that (so he said) it is  
33 possible to read into them a dispute concerning overlapping OCS entitlements.<sup>3</sup> In  
34 reality, he could point to only one document supposedly revealing a dispute  
35 regarding Mauritius' OCS claim. At the appropriate point in the chronology, I will  
36 explain why that single document in fact does not assist Mauritius at all.

37  
38 In 2009, Mauritius filed Preliminary Information with the Commission on the Limits of  
39 the Continental Shelf ("CLCS") claiming an OCS entitlement in respect of "the  
40 Chagos Archipelago Region".<sup>4</sup> At that time, Mauritius indicated that the preparation  
41 of its submission in the "Chagos Archipelago Region" was "currently being  
42 undertaken", had "reached an advanced stage" and was expected to be completed  
43 by 2012.<sup>5</sup> Mauritius also confirmed that its Preliminary Information was "consistent

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<sup>2</sup> Judgment on Preliminary Objections, para. 332.

<sup>3</sup> ITLOS/PV.22/C28/2, p. 4 (lines 23–30) (Klein). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

<sup>4</sup> Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (Counter-Memorial of the Republic of Maldives ("MCM"), Annex 54).

<sup>5</sup> *Ibid.*, para. 2-2.

1 with operative paragraph 1(a)” of “SPLOS/183”.<sup>6</sup> That paragraph of SPLOS/183  
2 concerns the requirements of preliminary information filed with the CLCS. One such  
3 requirement is that the preliminary information must be “indicative of the outer limits  
4 of the continental shelf beyond 200 nm”.<sup>7</sup>

5  
6 Returning to Mauritius’ 2009 preliminary information, Mauritius provided a map which  
7 showed “indicatively” the outer limits of its claimed OCS.<sup>8</sup> As is apparent from this  
8 diagram, Mauritius’ Preliminary Information related only to an area to the south of the  
9 Chagos Archipelago of no relevance to the present proceedings. It covered some  
10 180,000 square kilometres.

11  
12 For its part, the Maldives filed its submission to the CLCS in July 2010.<sup>9</sup> That  
13 submission contained a figure<sup>10</sup> with which the members of the Special Chamber are  
14 already familiar because Mauritius relied on this figure in its pleadings at the  
15 preliminary objections phase. I will return to this shortly.

16  
17 Mauritius protested against the Maldives’ CLCS submission. The specific grounds of  
18 its protest are of central importance.

19  
20 On 21 September 2010 (two months after the Maldives filed its submission),  
21 Mauritius sent a diplomatic note.<sup>11</sup> As you can see now, Mauritius informed the  
22 Maldives that it was “agreeable to holding formal talks with the Government of the  
23 Republic of Maldives for the delimitation of the exclusive economic zones (EEZs) of  
24 Mauritius and Maldives”. It also stated that it had “taken note” of the Maldives’ CLCS  
25 submission and that “the holding of EEZ delimitation boundary talks are all the more  
26 relevant in light of this submission”.

27  
28 The reason why the Maldives’ CLCS submission was relevant to EEZ delimitation  
29 negotiations was clarified soon after. The Parties met on 21 October 2010. The  
30 minutes, now shown, record that the discussion concerned the fact that “in the  
31 [Maldives’] submission to the CLCS the exclusive economic zone ... coordinates of  
32 the Republic of Mauritius in the Chagos region were not taken into consideration”.<sup>12</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, “Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)”, 20 June 2008, Doc SPLOS/183 (MCM, Annex 53), para. 1(a).

<sup>8</sup> Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (MCM, Annex 54), p. 10.

<sup>9</sup> “Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Republic of Maldives”, 26 July 2010, Doc MAL-ES-DOC (MCM, Annex 47).

<sup>10</sup> *Ibid.*, p. 10.

<sup>11</sup> Diplomatic Note No. 1311 from the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius, to the Ministry of Foreign Affairs of the Republic of Maldives, 21 September 2010 (MCM, Annex 65).

<sup>12</sup> Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

1 In other words, as noted by Ms Sander a few minutes ago, Mauritius' complaint was  
2 about an area of "overlap" between the Maldives' OCS entitlement and Mauritius'  
3 claimed entitlements within 200 nm.

4  
5 In its written Reply, Mauritius seized on the fact that a single sentence in these  
6 minutes refers in passing to the vague possibility of Mauritius asserting an OCS  
7 entitlement to the north of the Chagos Archipelago,<sup>13</sup> a claim which was nowhere  
8 referred to in its 2009 preliminary information. Precisely what the minutes say is as  
9 follows:

10  
11 The Mauritius side also noted that to the north of the Chagos archipelago  
12 there is an area of potential overlap of the extended continental shelf of the  
13 Republic of Maldives and the Republic of Mauritius and suggested that the  
14 two States can make a joint submission with regard to that area.<sup>14</sup>

15  
16 This is a matter that the two States could potentially have discussed. However, they  
17 could only have done so if Mauritius had articulated a claim. Had it done so, and had  
18 the Parties had discussions which did not produce an agreement, this could have  
19 evolved into a dispute. Plainly, the possibility of a future disagreement is not  
20 sufficient for the Chamber to be properly seized. As I will develop shortly, there must  
21 be an actual and objective dispute, as this notion is understood in international law. It  
22 is unsurprising that Professor Klein did not seek to rely on this document in his  
23 speech earlier this week.

24  
25 Instead, Professor Klein took the Special Chamber to only one document: the  
26 Parties' joint communiqué of 12 March 2011.<sup>15</sup> He showed just one sentence to  
27 you,<sup>16</sup> which read as follows: "Both leaders agreed to make bilateral arrangements  
28 on the overlapping area of extended continental shelf of the two States around the  
29 Chagos Archipelago."<sup>17</sup>

30  
31 The communiqué said nothing further at all regarding any OCS claim by either Party,  
32 so this sentence is the only evidence on which Mauritius hangs its entire case  
33 regarding the existence of a dispute. But this sentence does not refer to a  
34 disagreement between the Parties; instead, it refers to the Parties considering  
35 making "bilateral arrangements". An intention to collaborate is not a dispute.

36  
37 This reading of the joint communiqué is reinforced by the formal protest to the  
38 Maldives' CLCS submission which Mauritius filed with the Commission on 24 March

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<sup>13</sup> See Reply of the Republic of Mauritius ("MR"), paras. 3.8, 3.11.

<sup>14</sup> Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

<sup>15</sup> Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (MCM, Annex 66).

<sup>16</sup> ITLOS/PV.22/C28/2, p. 4 (lines 32–34) (Klein).

<sup>17</sup> Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (MCM, Annex 66).

1 2011, 12 days after the joint communiqué.<sup>18</sup> The scope of Mauritius' protest could  
2 not have been clearer. It stated, as you can now see:

3  
4 The Republic of Mauritius hereby protests formally against the submission  
5 made by the Republic of Maldives in as much as the Extended Continental  
6 Shelf being claimed by the Republic of Maldives encroaches on the  
7 Exclusive Economic Zone of the Republic of Mauritius.<sup>19</sup>  
8

9 In other words, Mauritius did not object to the Maldives' submission on the basis that  
10 it overlapped with any area of OCS to which Mauritius claimed an entitlement.  
11 Professor Klein sought to dismiss this fact on Monday as showing nothing more than  
12 a "lack of precision as to the precise extent" of Mauritius' claims.<sup>20</sup> But this document  
13 does not betray a mere absence of precision in any dispute concerning Mauritius'  
14 OCS claim. It shows the absence of any such dispute, full stop.  
15

16 Mauritius finally filed a full CLCS submission on 26 March 2019,<sup>21</sup> immediately after  
17 the ICJ had rendered its advisory opinion on the Chagos Archipelago and just three  
18 months before Mauritius commenced the present proceedings. The OCS entitlement  
19 which this submission claimed was still not located to the north of the Chagos  
20 Archipelago. Rather, it was the same southern claim which had been advanced in  
21 2009, as you can now see.<sup>22</sup>  
22

23 In this submission, Mauritius stated vaguely that it intend[ed] to make a future partial  
24 submission concerning the continental shelf in the northern Chagos Archipelago  
25 Region in due course,<sup>23</sup> without indicating, for example, the extent of the claim it may  
26 advance. By a vague statement of future intent directed towards the CLCS, and not  
27 even to the Maldives itself, Mauritius had not asserted any OCS claim overlapping  
28 with the Maldives' claim. Equally clearly, in the three months before Mauritius  
29 instigated these proceedings, the Maldives had not disputed any such hypothetical  
30 future claim.  
31

32 Nothing had changed by 18 June 2019, when Mauritius commenced the present  
33 proceedings, and still nothing had changed when the Special Chamber handed down  
34 its judgment on preliminary objections on 28 January 2021. As I will address in the  
35 third part of my speech, the Chamber gave careful consideration to the scope of the  
36 dispute which was within its jurisdiction. Despite what Professor Klein said earlier  
37 this week, the fact is that the dispute it identified did not encompass any claim to an  
38 OCS entitlement on the part of Mauritius.  
39

40 The rest of the narrative is well known. On 24 May 2021, the day before filing its  
41 Memorial, Mauritius articulated its claim to an OCS entitlement north of the Chagos  
42 Archipelago for the first time, in the form of preliminary information filed with the

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<sup>18</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).

<sup>19</sup> *Ibid.*

<sup>20</sup> ITLOS/PV.22/C28/2, p. 4 (line 45) (Klein).

<sup>21</sup> Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, Doc MCSS-ES-DOC, March 2019 (MCM, Annex 6).

<sup>22</sup> *Ibid.*, p. 9.

<sup>23</sup> *Ibid.*, para. 1-5.

1 CLCS.<sup>24</sup> Then, in April 2022, two days before filing its Reply, Mauritius filed a CLCS  
2 submission regarding this alleged entitlement.<sup>25</sup>

3  
4 Mr President, now is a natural break in my speech. I wonder if it would be convenient  
5 to have the Chamber's break a few minutes early.

6  
7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Hart. At this stage,  
8 the Special Chamber will withdraw for a break of 30 minutes. We will continue the  
9 hearing at 5 p.m.

10  
11 (Break)

12  
13 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to Ms Hart to  
14 continue her statement. You have the floor.

15  
16 **MS HART:** Thank you, Mr President. I turn now to the second part of my statement  
17 concerning the requirements of a dispute within the meaning of article 288 of  
18 UNCLOS.

19  
20 The Chamber's finding on a dispute as a jurisdictional precondition, to which I have  
21 already referred,<sup>26</sup> reflected the uniform jurisprudence on this issue. The award in  
22 the *South China Sea Arbitration* confirmed that the existence of a dispute  
23 "constitutes a threshold requirement for the exercise of the Tribunal's jurisdiction"  
24 with the result that, "[s]imply put, the Tribunal is not empowered to act except in  
25 respect of one or more actual disputes between the Parties".<sup>27</sup>

26  
27 The basic requirements of a dispute are well known. In the *Marshall Islands* case,  
28 the International Court said that "the parties must 'hold clearly opposite views' with  
29 respect to the issue brought before the Court".<sup>28</sup> Note the specific reference to "the  
30 issue brought before the Court"; a disagreement on some other issue, even if  
31 related, is not sufficient.

32  
33 The Court went on to say that an applicant State must "[demonstrate], on the basis  
34 of the evidence, that the respondent was aware, or could not have been unaware,  
35 that its views were 'positively opposed' by the applicant".<sup>29</sup> The tribunal in the *South*  
36 *China Sea Arbitration* confirmed that "'positive opposition' between the parties"

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<sup>24</sup> Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5).

<sup>25</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 (Rejoinder of the Republic of Maldives, Annex 5).

<sup>26</sup> Judgment on Preliminary Objections, para. 322, citing *M/V "Norstar" (Panama v. Italy)*, *Preliminary Objections*, Judgment, 4 November 2016, p. 65, para. 84; see also *M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Judgment, 28 May 2013, p. 46, para. 151.

<sup>27</sup> *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 148.

<sup>28</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2016*, p. 833 at pp. 850–851, para. 41.

<sup>29</sup> *Ibid.*

1 means that “the claims of one party are affirmatively opposed and rejected by the  
2 other”.<sup>30</sup>

3  
4 The question of whether a dispute exists is an objective one and, moreover, to quote  
5 the ICJ in *Georgia v. Russia*, it is a “matter ... of substance, not of form”.<sup>31</sup> One  
6 party’s assertion that there is a dispute is irrelevant if, in substance, there are not  
7 positively opposed claims.

8  
9 Professor Klein suggested to the Chamber that there is no barrier to jurisdiction  
10 where there are mere imprecisions”as to the contours of the Parties’ competing  
11 claims.<sup>32</sup> But he did not address any of the jurisprudence dealing with the clarity  
12 required of a dispute. As the ICJ held in the *Marshall Islands* case, it is not enough  
13 for one State to make statements that lack any particulars concerning the dispute.<sup>33</sup>

14  
15 It is true that, in its earlier judgment, this Special Chamber clarified that “maritime  
16 delimitation disputes are not limited to disagreement concerning the location of the  
17 actual maritime boundary”.<sup>34</sup> However, naturally, that did not remove the requirement  
18 for positively opposed claims. To the contrary, the Special Chamber had in the  
19 previous paragraph of its judgment expressly recognized precisely this  
20 requirement.<sup>35</sup>

21  
22 While a dispute need not be articulated to the level of minute granularity, the  
23 requirement must have some meaningful content, such that the parties are able to  
24 understand and engage with each other’s positions. In the context of OCS claims,  
25 any latitude cannot be stretched so far as to allow that one side need not indicate,  
26 even in high-level terms, the approximate scope of its entitlement. This is even more  
27 so when that same party has submitted formal documents to the CLCS which are  
28 required to be “indicative” of its claim but which did not include the area in question  
29 at all.

30  
31 It is essential that the dispute existed at the critical date of the filing of the  
32 application.<sup>36</sup> Indeed, the ICJ made this authoritative pronouncement in the *Marshall*  
33 *Islands* case:

34  
35 [A]lthough statements made or claims advanced in or even subsequently  
36 to the Application may be relevant for various purposes – notably in

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<sup>30</sup> *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 159.

<sup>31</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 at p. 84, para. 30.

<sup>32</sup> ITLOS/PV.22/C28/2, p. 4 (lines 47, 49) (Klein).

<sup>33</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 833 at pp. 851, 855–856, paras. 42–43, 57.

<sup>34</sup> Judgment on Preliminary Objections, para. 333.

<sup>35</sup> *Ibid.*, para. 332.

<sup>36</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 at pp. 84–85, para. 30; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 833 at pp. 851, 855, paras. 43, 54.

1 clarifying the scope of the dispute submitted – they cannot create a dispute  
2 *de novo*, one that does not already exist.<sup>37</sup>

3  
4 An applicant State cannot seek to have a multiplicity of matters determined together  
5 where only some of those matters satisfy the requirements of a dispute. This is  
6 related to the point I have already emphasized that the dispute must relate to “the  
7 issue brought before the Court”<sup>38</sup>. A dispute on a different issue cannot be used as a  
8 multi-purpose jurisdictional hook.

9  
10 This is critical, because it is a principle that Mauritius would have the Special  
11 Chamber ignore. Mauritius stated in its Memorial that a choice by the Chamber to  
12 delimit the Parties’ overlapping OCS claims would

13  
14 contribute to the efficient and sound administration of justice, allowing the  
15 Special Chamber to assist the Parties in fully resolving their differences,  
16 both within and beyond 200 M.<sup>39</sup>

17  
18 But this cannot be the right approach as a matter of principle. The requirements of a  
19 crystallized dispute cannot be bypassed by simply rolling different issues into a  
20 single proceeding where not all of them were the subject of a timely disagreement.

21  
22 This position is reflected in the award in *Barbados v. Trinidad and Tobago*. It is  
23 surprising that Mauritius cited this case in their Reply,<sup>40</sup> and indeed it remains the  
24 only authority Mauritius has cited in relation to the existence of a dispute, when in  
25 fact this award seriously undermines its case.

26  
27 In that case, the applicant State was Barbados. Barbados had commenced a claim  
28 for delimitation of the parties’ EEZs and continental shelf entitlements, and it  
29 confirmed that the latter related only to continental shelf entitlements within  
30 200 nm.<sup>41</sup> The respondent State (Trinidad and Tobago) invited the tribunal to delimit  
31 the boundary in respect of the parties’ overlapping OCS claims as well.<sup>42</sup> The  
32 tribunal acceded to this invitation.<sup>43</sup> But it did so not on the grounds merely that it  
33 would be efficient for all of the parties’ maritime claims to be delimited at once.  
34 Instead, it embarked on a careful analysis which allowed it to conclude that this  
35 specific issue – the delimitation of the parties’ claims to OCS entitlement – had been  
36 the subject of a dispute before the proceedings commenced. Specifically, it found  
37 that “the record of the negotiations shows that it” [i.e. how to deal with the overlap  
38 between OCS claims] “was part of the subject-matter on the table during those  
39 negotiations” between the parties.<sup>44</sup>

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<sup>37</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 833 at p. 855, para. 54.

<sup>38</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 833 at pp. 850–851, para. 41.

<sup>39</sup> Memorial of the Republic of Mauritius (“MM”), para. 4.66.

<sup>40</sup> MR, para. 3.1.

<sup>41</sup> *Barbados v. Trinidad and Tobago*, Reply of Barbados, 9 June 2005, para. 126(a)–(b).

<sup>42</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 213.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

1  
2 This finding was clearly supported by the evidence. In the parties' first round of  
3 negotiations in July 2000, Trinidad and Tobago stated as follows:

4  
5 Trinidad and Tobago is looking at a single all purpose delimitation line for  
6 the seabed and subsoil and the superjacent waters. Trinidad and Tobago  
7 is not looking to stop at 200 nautical miles but to extend its seabed  
8 jurisdiction up to the maximum limit of 350 nautical miles or 100 nm from  
9 the 2500 metre isobath which is subject to approval by the Commission on  
10 the Limits of the Continental Shelf.<sup>45</sup>

11  
12 Trinidad and Tobago had claimed in that first negotiation to that:

13  
14 it was entitled to a shelf beyond the 200 nm mark in the eastern (Atlantic)  
15 sector in accordance with the principles that a State should not be cut off  
16 from its natural prolongation and that one State's maritime spaces should  
17 not unduly encroach on the coast of another.<sup>46</sup>

18  
19 This was Trinidad and Tobago articulating its claim and its view of the correct legal  
20 position, giving Barbados an opportunity to set out a competing and positively  
21 opposed claim.

22  
23 And that is precisely what Barbados did in a further round of negotiations in October  
24 2000. Barbados was recorded as having "rejected Trinidad and Tobago's argument  
25 that it should not be cut off from its entitlement to a continental shelf beyond the  
26 200 nm line".<sup>47</sup> What this demonstrated was that each State had expressed its  
27 position and that those positions were affirmatively rejected by the other side. This is  
28 what led the tribunal to conclude that there had been a specific dispute in relation to  
29 the delimitation of overlapping OCS entitlements which had crystallized before  
30 proceedings began.

31  
32 The requirement of a dispute predating the institution of proceedings is not a mere  
33 technicality, and nor is it a discretionary factor to which an international court or  
34 tribunal can attribute whatever weight it sees fit in the circumstances of a case. It is a  
35 compulsory precondition to the exercise of jurisdiction. When States signed up to the  
36 compulsory dispute settlement provisions in UNCLOS, their consent was conditioned  
37 on this requirement being observed.

38  
39 This condition is one that is underpinned by compelling policy considerations.  
40 Binding dispute settlement exposes a State to a potentially drawn-out adversarial  
41 process in which both States seek maximum unilateral benefit. Parties to litigation  
42 are constrained to formulate their positions within tight time frames and in a fixed  
43 number of written and oral pleadings, rather than through expressions of views  
44 outside of litigation which could be made over a longer period and multiple  
45 exchanges. This is especially significant in relation to matters where extensive  
46 technical input is required. Finally, litigation entails significant costs, naturally of  
47 particular concern to small island developing States with limited resources.

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<sup>45</sup> *Barbados v. Trinidad and Tobago*, Rejoinder of Trinidad and Tobago, 18 August 2005, para. 159.

<sup>46</sup> *Barbados v. Trinidad and Tobago*, Counter-Memorial of Trinidad and Tobago, 30 March 2005, para. 62(1).

<sup>47</sup> *Ibid.*, para. 65.



1  
2 All these considerations illuminate why States have an interest in knowing a claim  
3 against them before litigation is commenced and why, therefore, they agreed that the  
4 “dispute” requirement should be included in UNCLOS. Reflecting these concerns,  
5 the ICJ stated in the *Marshall Islands* case:

6  
7       If the Court had jurisdiction with regard to disputes resulting from  
8       exchanges in the proceedings before it, a respondent would be deprived of  
9       the opportunity to react before the institution of proceedings to the claim  
10       made against its own conduct.<sup>48</sup>

11  
12 The Court considered such an outcome to be unacceptable and to “subvert” the  
13 dispute requirement.

14  
15 The requirement of a dispute also needs to be analysed in the broader context of  
16 UNCLOS. This Special Chamber has already held that article 83, which concerns  
17 delimitation of the continental shelf, “entail[s] an obligation to negotiate in good faith  
18 with a view to reaching an agreement on delimitation”.<sup>49</sup> Negotiations can occur only  
19 if both parties are aware that there is a matter on which they are positively opposed  
20 and what the other side’s position is.

21  
22 Beyond that, UNCLOS article 283 obliges the parties to a dispute to engage in an  
23 exchange of views regarding the settlement of their dispute before either of them has  
24 recourse to compulsory dispute settlement. The title of article 283 is “Obligation to  
25 exchange views”, denoting that this provision refers to a mandatory substantive duty.  
26 It presupposes that there is already a “dispute” between the parties, after the  
27 crystallization of which they shall exchange views on means of peaceful settlement.

28  
29 It is well established that the requirement under article 283 has a “distinct purpose”<sup>50</sup>  
30 and “is not an empty formality, to be dispensed with at the whims of a disputant”.<sup>51</sup>  
31 According to the case law, the purpose of article 283 is to ensure that “a State would  
32 not be taken entirely by surprise by the initiation of compulsory proceedings”.<sup>52</sup> It is  
33 fair to say that the Maldives was taken by surprise by the OCS claim made against it  
34 in this case.

35  
36 That brings me, Mr President, in the third and final part of my speech, to the  
37 application of these legal principles to the facts of the present case.

38  
39 I can do so in short order, because the facts really speak for themselves. I have  
40 already taken the Special Chamber through the chronology of events. The record is

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<sup>48</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 833 at p. 851, para. 43.

<sup>49</sup> Judgment on Preliminary Objections, para. 273.

<sup>50</sup> *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, Dissenting Opinion of Judge Wolfrum, para. 27.

<sup>51</sup> *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, Separate Opinion of Judge Chandrasekhara Rao, para. 11.

<sup>52</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382.

1 clear. Mauritius did not, prior to these proceedings, ever articulate a claim to an OCS  
2 which overlapped with the Maldives' OCS entitlement. The only OCS claim it had  
3 ever articulated in the vicinity of the Chagos Archipelago was to the south.  
4

5 The March 2011 joint communiqué on which Professor Klein relied does not change  
6 this position. It referred to the possibility of making bilateral arrangements and not to  
7 a dispute. The single sentence referring in passing to overlapping claims did not  
8 amount to a positive opposition of views or have the required level of clarity of a  
9 dispute and the Maldives could not have had any idea as to Mauritius' position.  
10 Recalling that the question is one of substance and not of form, Mauritius cannot  
11 establish that, substantively, there was any relevant dispute.  
12

13 Even if the evidence were not conclusive (which it is), Mauritius' own conduct in the  
14 Preliminary Objection phase of these proceedings would eliminate any conceivable  
15 doubt. Indeed, given that the Maldives' fourth preliminary objection was specifically  
16 that there was no dispute, Mauritius advanced a head-on case as to the scope of the  
17 dispute and the evidence supporting it and its position was crystal clear.  
18

19 In Figure 4 of its Written Observations, Mauritius depicted what it described as the  
20 "The Parties' Area of Overlapping Claims".<sup>53</sup> As you can see, the area which  
21 Mauritius itself presented as constitutive of the dispute was only the overlap between  
22 the Parties' claims within 200 nautical miles.  
23

24 Of course, the dispute presented by Mauritius at that phase did involve an OCS  
25 claim, namely, that of the Maldives. Mauritius stated that the Maldives' claimed OCS  
26 entitlement "extends a full 200 nm southwards, encroaching to a significant extent  
27 into the maritime area claimed by Mauritius and disputing potential maritime  
28 entitlements of Mauritius to its EEZ north of the Chagos Archipelago".<sup>54</sup> Figure 4,  
29 which I have just shown, was said to reflect that aspect of the dispute as well. Surely,  
30 if there was a dispute between Mauritius and the Maldives regarding overlapping  
31 OCS entitlements, Mauritius would have mentioned it then.  
32

33 It is no surprise that, in finding the existence of a dispute, the Chamber identified the  
34 dispute consistently with both the evidence and Mauritius' case. Mauritius' case,  
35 which the Chamber accepted, was that "graphic representations illustrate the extent  
36 of the Parties' claims".<sup>55</sup> Neither Mauritius nor the Chamber suggested that there  
37 was any dispute beyond that reflected in the relevant graphics, which I have already  
38 shown.  
39

40 The Chamber proceeded to find that the Parties' "respective claims to an Exclusive  
41 Economic Zone in the relevant area overlap".<sup>56</sup> It also recognized a dispute created  
42 by the overlap between the Maldives' OCS claim and Mauritius' EEZ. This is critical.  
43 The Chamber stated:  
44

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<sup>53</sup> Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, Figure 4.

<sup>54</sup> Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, para. 3.44.

<sup>55</sup> Judgment on Preliminary Objections, para. 314.

<sup>56</sup> *Ibid.*, para. 327.

1 In the view of the Special Chamber, it is clear from the above that there is  
2 an overlap between the claim of the Maldives to a continental shelf beyond  
3 200 nautical miles and the claim of Mauritius to an exclusive economic  
4 zone in the relevant area.<sup>57</sup>  
5

6 Unsurprisingly, the Chamber did not identify any dispute involving an OCS claim by  
7 Mauritius. How could it, when no such claim had ever been articulated let alone  
8 opposed by the Maldives?  
9

10 On Monday, Professor Klein made two points with respect to the Judgment on  
11 Preliminary Objections. First, he said that paragraph 332, which I have just shown,  
12 should not be read literally because it referred only to an overlap between the  
13 Maldives' OCS and Mauritius' EEZ, which would, on the strictest of readings,  
14 exclude even a dispute over Mauritius' continental shelf within 200 nautical miles.<sup>58</sup>  
15

16 This argument ignores the basic point raised by the Maldives since its Counter-  
17 Memorial<sup>59</sup> and never objected to by Mauritius, that, according to the case law,  
18 within 200 nm an EEZ claim necessarily co-exists with a continental shelf claim.<sup>60</sup>  
19 Thus, the Chamber's references to Mauritius' EEZ must of course be construed as  
20 corresponding to Mauritius' continental shelf claim within 200 nm. The Parties are in  
21 consensus that what Professor Klein himself described as an "absurd"<sup>61</sup> reading of  
22 the judgment is not the correct one.  
23

24 Secondly, Professor Klein referred to the fact that, in places other than  
25 paragraph 332, the Special Chamber referred to the existence of a dispute  
26 concerning maritime delimitation in more general terms, including in paragraph 335  
27 and the sixth paragraph of the dispositif.<sup>62</sup> But now it is my turn to urge against an  
28 absurd reading of the judgment. Those paragraphs of the judgment were merely  
29 meant to state the conclusion arising from the reasoning which had preceded them,  
30 and should not be read to the exclusion of the Chamber's substantive analysis. In  
31 those concluding paragraphs, the Chamber stated the existence of a dispute in  
32 categorical terms because neither Party had suggested that there was a dispute  
33 beyond the one it had previously identified with reference to the evidence and the  
34 Parties' submissions. Naturally, the Chamber would not have expressly excluded the  
35 existence of an OCS dispute which neither Party had suggested was in existence.  
36

37 Professor Klein also drew attention to the fact that Mauritius referred, in its  
38 notification of June 2019, to an OCS claim by Mauritius.<sup>63</sup> But, as I have already  
39 explained, a dispute must have crystallized prior to proceedings, and a notification  
40 cannot itself create a dispute *de novo*. In this case the objective facts show that there  
41 was no relevant dispute, whatever Mauritius' notification said.  
42

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<sup>57</sup> *Ibid.*, para. 332.

<sup>58</sup> ITLOS/PV.22/C28/2, p. 5 (lines 27–40) (Klein).

<sup>59</sup> MCM, para. 111.

<sup>60</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, paras. 226, 234; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 at p. 33, para. 34.

<sup>61</sup> ITLOS/PV.22/C28/2, p. 5 (line 25) (Klein).

<sup>62</sup> ITLOS/PV.22/C28/2, p. 6 (lines 1–18) (Klein).

<sup>63</sup> Notification and Statement of Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019 (MCM, Annex 64), para. 27; ITLOS/PV.22/C28/2, p. 6 (lines 21–26) (Klein).

1 On this point, allow me to illustrate Mauritius' change in position clearly with the  
2 figures you can now see. On the left is the figure that was Mauritius' representation  
3 of the overlapping claims at the preliminary objections phase. This was, according to  
4 Mauritius, the full extent of the dispute, and the Chamber agreed; and on the right is  
5 its figure showing the maritime territory which it now seeks to have delimited.

6  
7 This case is not at all like *Barbados v. Trinidad and Tobago*. Unlike in that case,  
8 Mauritius never articulated an OCS claim overlapping with that claimed by the  
9 Maldives or sought delimitation of such overlapping claims. The Maldives had not a  
10 clue as to the extent of any OCS entitlement which Mauritius may have sought at  
11 some future point.

12  
13 It is especially striking in this case that Mauritius' approach to delimitation of the  
14 overlapping OCS claims is such a radical one. As Ms Sander will address in more  
15 detail tomorrow, in her second speech, contrary to all precedents, Mauritius invites  
16 the Chamber to draw an azimuth that completely disregards the equidistance  
17 method. Plainly, Mauritius could never have anticipated this prior to the notification.

18  
19 The Maldives has suffered all of the negative consequences which inevitably arise  
20 when a State is forced to litigate a claim where no dispute predated the proceedings.  
21 It was deprived of any opportunity to react to the claim or to engage in negotiations  
22 or an exchange of views as to methods of dispute settlement. It has been compelled  
23 to deal with this claim within a rigid timeframe, and it has done a limited number of  
24 exchanges, where evidence has been produced incrementally, against an  
25 adversarial backdrop. Its opportunity to consult technical experts has necessarily  
26 been curtailed. It has incurred the significant costs of litigation regarding an issue  
27 which was simply never communicated to it before proceedings started.

28  
29 To exercise jurisdiction under such circumstances, the Maldives respectfully submits,  
30 would set an unfortunate precedent and be contrary to the terms of UNCLOS. We  
31 invite the Chamber to dismiss this part of Mauritius' claim. The Parties can then get  
32 on with constructive exchanges concerning these issues, outside of litigation, in the  
33 spirit of harmony which both sides have emphasized this week.

34  
35 Mr President, I would now ask that you give the podium to Professor Mbengue.

36  
37 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Hart. I now give  
38 the floor to Mr Mbengue to make his statement. You have the floor, Sir.

39  
40 **MR MBENGUE:** Mr President, honourable Members of the Special Chamber, it is an  
41 honour to appear before you and to do so on behalf of the Republic of Maldives.

42  
43 Mr President, I might need a few minutes to finalize my speech. Can I ask for your  
44 indulgence? Thank you very much.

45  
46 My colleague Dr Hart has already shown that there is no jurisdiction to delimit the  
47 continental shelf beyond 200 nm in this case. Yet when, in its Judgment on  
48 Preliminary Objections, the Special Chamber deferred "to the proceedings on the  
49 merits questions regarding the extent to which the Special Chamber may exercise its

1 jurisdiction”,<sup>1</sup> it left open not only whether it has jurisdiction over this claim at all, but  
2 also whether, if jurisdiction exists, the Chamber should exercise it. I will now  
3 demonstrate how – even if *par impossible* the Special Chamber were to find that it  
4 has jurisdiction in this regard – Mauritius’ claim would be inadmissible, for the chief  
5 reason that it is fatally time-barred.

6  
7 Allow me, Mr President, to remind the Special Chamber of the undisputed facts  
8 relating to Mauritius’ CLCS submission.

9  
10 The Special Chamber will recall – and this was acknowledged by my colleague and  
11 friend Professor Klein on Monday – that Mauritius’ 2009 Preliminary Information  
12 made no mention of the area it now refers to as the “Northern Chagos Archipelago”.  
13 As shown in the chronology that appears on your screens, Mauritius made a CLCS  
14 submission in 2019 on the basis of this preliminary information before instituting  
15 arbitral proceedings against the Maldives less than three months later. Mauritius  
16 then purported to file preliminary information concerning the Northern Chagos  
17 Archipelago in May 2021 – after the Special Chamber had rendered its Judgment on  
18 Preliminary Objections, and one day before the deadline for its Memorial. Earlier this  
19 year, Mauritius purported to file what it alternately characterizes as a “full”<sup>2</sup> and  
20 “partial”<sup>3</sup> CLCS submission on the Northern Chagos Archipelago – after the Special  
21 Chamber had ordered a second round of pleadings necessary, and two days before  
22 the deadline for its Reply.

23  
24 By asserting in its Reply that the “admissibility [of its April 2022 submission] for the  
25 purposes of the present proceedings is clearly established”,<sup>4</sup> Mauritius does not  
26 dispute the fact that it was required to file a CLCS submission before seeking  
27 settlement under Part XV of the Convention<sup>5</sup> and that such requirement is a matter  
28 of admissibility for OCS claims. In fact, Mauritius agreed as much during these very  
29 oral proceedings. As you can see on your screens, Professor Klein said on Monday:

30  
31 *(Continued in French)*

32 The International Court of Justice indeed very clearly established that they  
33 could only proceed to such a delimitation if an essential prerequisite had  
34 been satisfied, namely the formulation of a submission – or at the very least  
35 a communication of preliminary information – to the Commission on the  
36 limits of the continental shelf by the State requesting this delimitation.<sup>6</sup>

37  
38 *(Resumed in English)* However, despite this clear acknowledgment, and instead of  
39 reaching the one and only logical conclusion that its claim is inadmissible, Mauritius  
40 still considers that it can “cure” that defect by filing a submission three years into this  
41 case.

42  

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<sup>1</sup> *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, 28 January 2021 (“Judgment on Preliminary Objections”), paras. 352, 354(6).*

<sup>2</sup> Reply of the Republic of Mauritius (“MR”), para. 3.29.

<sup>3</sup> *Ibid.*, para. 4.3.

<sup>4</sup> *Ibid.*, para. 3.29.

<sup>5</sup> *Ibid.*, Counter-Memorial of the Republic of Maldives (“MCM”), paras. 69–78.

<sup>6</sup> TIDM/PV.22/A28/2, p. 7 (lines 39–43) (Klein). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

1 Mr President, Mauritius' 2022 submission is unprecedented, not only in its timing, but  
2 also in its content. Mauritius is the only State which has sought to use the CLCS  
3 submission process to respond to arguments raised in international litigation. What  
4 Mauritius simply characterized in its Reply as "a more refined and accurate  
5 description"<sup>7</sup> of the outer continental shelf claim, first sketched out in rudimentary  
6 terms in its 2021 preliminary information, appears now and retrospectively as part of  
7 a broader process, a broader strategy, whose purpose was, to quote Professor  
8 Klein, (*Continued in French*) "clearly to simply stop the clock".<sup>8</sup>

9  
10 (*Resumed in English*) Unfortunately, by choosing to stop the clock, Mauritius is now  
11 facing two hurdles that affect the admissibility of its OCS claim *in casu*, and which  
12 I will address in turn.

13  
14 First, it is clear from the jurisprudence of international courts and tribunals that a  
15 claim to an outer continental shelf is inadmissible without a prior CLCS submission,  
16 and it is equally clear that the critical date for admissibility is the date on which  
17 proceedings are initiated. This applies particularly to the Applicant State, which  
18 elects when to commence its case. On Monday, Mauritius remained entirely silent on  
19 the fact that it had not filed its CLCS submission concerning the Northern Chagos  
20 Archipelago when it elected in haste to commence proceedings, less than a month  
21 after General Assembly resolution 73/295.<sup>9</sup> It cannot now retroactively remedy that  
22 fundamental flaw by filing a CLCS submission two days before its Reply, in  
23 contravention of the ITLOS Rules and every basic principle of procedural fairness.

24  
25 Second, and this was also admitted by Professor Klein on Monday, the States  
26 Parties to the Convention, in other words the very guardians of "the clock", made  
27 clear through Decision No. 72 of 2001,<sup>10</sup> and Decision No. 183 of 2008,<sup>11</sup> that States  
28 are under an obligation to make timely submissions.

29  
30 That date, for Mauritius, was in 2009 when it filed its Preliminary Information on the  
31 Chagos Archipelago, with no mention whatsoever in respect of what it now calls the  
32 "Northern Chagos" region. By filing its so-called "amended" Preliminary Information  
33 in 2021, just one day before filing its Memorial, Mauritius has acted 12 years past the  
34 deadline that other State Parties, including the Maldives, have scrupulously  
35 observed. To declare that Mauritius' new claim is admissible, the Maldives  
36 respectfully submits, would undermine Rules established under this Convention, and  
37 would set an unfortunate precedent for future proceedings under the Convention.

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<sup>7</sup> MR, para. 4.3.

<sup>8</sup> TIDM/PV.22/A28/2, p. 9 (line 30) (Klein).

<sup>9</sup> United Nations General Assembly Resolution 73/295, "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295.

<sup>10</sup> United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea", 29 May 2001, Doc SPLOS/72 (MCM, Annex 52).

<sup>11</sup> United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)", 20 June 2008, Doc SPLOS/183 (MCM, Annex 53).

1  
2 I will now focus, Mr President, on these two hurdles to the admissibility of Mauritius'  
3 OCS claim. I will show that Mauritius' claim to an outer continental shelf entitlement  
4 is inadmissible because it has not filed a full submission with the CLCS prior to its  
5 commencement of proceeding, and that Mauritius is not entitled to file or rely on a  
6 submission in respect of the Northern Chagos Archipelago Region because it did not  
7 file its preliminary information regarding this region within the mandatory time limits,  
8 which expired in 2009. In both respects, Mauritius flaunts its non-compliance with  
9 established Rules, and asks the Special Chamber to remove the cornerstones of the  
10 Convention – to ignore, and ultimately destabilize, a carefully agreed balance  
11 between 168 parties.  
12

13 I turn now to the first part of my submission, in which I will demonstrate that  
14 Mauritius' request for delimitation of the outer continental shelf is inadmissible  
15 because Mauritius did not file a full submission with the CLCS prior to instituting  
16 proceedings against the Maldives.  
17

18 As I have already indicated, the Parties agree that a CLCS submission is a  
19 prerequisite for the admissibility of a claim to an outer continental shelf. The  
20 jurisprudence of international courts and tribunals has clearly established that it is  
21 essential to file this submission to the CLCS before requesting the delimitation of an  
22 outer continental shelf entitlement.<sup>12</sup> Contrary to this requirement, Mauritius did not  
23 make its submission before instituting these proceedings; and, as I will now discuss,  
24 Mauritius cannot rectify that failing by placing a submission before the Special  
25 Chamber and the Maldives at this very late stage.  
26

27 In its 2016 judgment on the delimitation of the outer continental shelf between  
28 Nicaragua and Colombia, to which Mauritius referred several times, the International  
29 Court of Justice upheld its jurisdiction over Nicaragua's claim only because  
30 Nicaragua had provided the relevant final information consistent with its obligations  
31 under the Convention.<sup>13</sup> The Court confirmed that the filing of a full CLCS  
32 submission was a condition of and a prerequisite to upholding jurisdiction over such  
33 claims.<sup>14</sup> It found that a Party to the Convention must have "submit[ted] information  
34 on the limits of the continental shelf it claims beyond 200 nautical miles, in  
35 accordance with article 76, paragraph 8, of UNCLOS, to the CLCS."<sup>15</sup>  
36

37 In other cases such as *Somalia v. Kenya*,<sup>16</sup> *Ghana v. Côte d'Ivoire*,<sup>17</sup> and  
38 *Bangladesh v. Myanmar*,<sup>18</sup> both the ICJ and ITLOS have made clear that an  
39 international tribunal must be satisfied that an alleged outer continental shelf

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<sup>12</sup> MCM, paras. 69–75.

<sup>13</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200nm from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 100 at p. 132, paras. 86–87.

<sup>14</sup> *Ibid.*, p. 132, para. 87 and p. 136, para. 105.

<sup>15</sup> *Ibid.*, p. 131, para. 82.

<sup>16</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 193.

<sup>17</sup> *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 491.

<sup>18</sup> *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 397, 399, 446.

1 entitlement exists – exists – before exercising jurisdiction to delimit this entitlement.  
2 In fulfilling this duty, no court or tribunal has ever used data produced after the  
3 crucial date of seisin.<sup>19</sup>

4  
5 Mauritius invites the Special Chamber to depart from this *jurisprudence constante*  
6 without cogent reasons. Indeed, with a submission it made only months ago,  
7 Mauritius seeks delimitation on the basis of data produced not only after the  
8 institution of this case, but also after the Chamber had issued its Judgment on  
9 Preliminary Objections, and the Parties had filed their Memorial and Counter-  
10 Memorial. In so doing, Mauritius has failed to comply with the principles governing  
11 these, and every international legal proceeding. These principles include a duty of  
12 good-faith cooperation with the tribunal in establishing the relevant facts, which  
13 prohibits parties from using a second round of pleadings to seek to alter the factual  
14 basis of their submissions.<sup>20</sup>

15  
16 This approach, Mr President, is also out of step with article 62, paragraph 1, of the  
17 ITLOS Rules, which required Mauritius to set out in its Memorial “a statement of the  
18 relevant facts”. Mauritius’ actions are similarly inconsistent with the Special  
19 Chamber’s Order granting a second round of pleadings in this case. In accordance  
20 with article 61, paragraph 3, of the Rules, the Special Chamber may authorize the  
21 presentation of replies and rejoinders in a case only if “it finds them to be necessary”.  
22 Logically, this cannot be the basis for one party to introduce an entirely new  
23 submission.

24  
25 By inhibiting a respondent’s ability to respond to its allegations, Mauritius’ late filings  
26 have had a serious and detrimental impact on the fairness of these proceedings,  
27 which in turn contravenes the general principles that govern international legal  
28 proceedings. As the ICJ found in *Land, Island and Maritime Frontier Dispute*, parties  
29 in inter-State proceedings are “subject to the obligations” arising under what the ICJ  
30 called “the general principles of procedural law”.<sup>21</sup> In the *Genocide* case, the Court  
31 observed that “the submission by the Applicant of a series of documents” out of time  
32 is “difficult to reconcile with an orderly progress of the procedure before the Court,  
33 and with respect to the principle of equality of the Parties” and found that it could

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<sup>19</sup> See the jurisprudence recalled in MCM, paras. 79–80 and footnotes 155–157. Reproduced here: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624 at p. 669, para. 129; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 193; *Delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, para. 491; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 397, 399, 446; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 440; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 78, 457–458; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 194.

<sup>20</sup> See Robert Kolb, “General Principles of Procedural Law”, in Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary, Third Edition* (Oxford University Press, 2019), pp. 963–1006, at p. 978, para. 23(4).

<sup>21</sup> *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene*, Judgment, I.C.J. Reports 1990, p. 92 at p. 135, para. 102.



1 take such documents into account only when justified by the kind of extraordinary  
2 urgency utterly lacking in the present case.<sup>22</sup>

3  
4 This jurisprudence, Mr President, reflects the fact that international courts and  
5 tribunals have not only the power, but also the duty to sanction breaches of the  
6 principle of party equality arising from the late substantiation of a claim, particularly  
7 when urgency is lacking and, as in the present case, such delay was avoidable.<sup>23</sup>  
8 Indeed, the single-beam, public domain data underlying Mauritius' 2022 submission  
9 is over 40 years old, and would therefore have been available when Mauritius filed  
10 its 2009 preliminary information (as well as its 2019 submission). This bathymetric  
11 data has in fact been readily available via download from the United States National  
12 Oceanic and Atmospheric Administration since the early 2000s.<sup>24</sup>

13  
14 This casts serious doubt over the real (“*réelles*”) and “many” difficulties mentioned by  
15 Professor Klein on Monday to justify what he called (*continued in French*) “the  
16 extremely summary character”<sup>25</sup> (*resumed in English*) of Mauritius' 2009 preliminary  
17 information. Indeed, given the fact that this data was fully available, these alleged  
18 difficulties could have been easily overcome, and there is no justification for the  
19 Applicant's subsequent 13-year delay in completing and amending this submission.  
20 Likewise, (*continued in French*) “the physical impossibility of having any access to  
21 the Chagos Archipelago region”, (*resumed in English*) invoked by Professor Klein,  
22 cannot justify why Mauritius did not use the available data in 2009.

23  
24 Finally, when Professor Klein referred to (*continued in French*) “the considerable  
25 workload weighing on the competent services of Mauritius at that time”, (*resumed in*  
26 *English*) he mentioned the three distinct submissions Mauritius had to make in this  
27 crucial period — but this argument, Mr President, proves too much: if Mauritius could  
28 file three submissions at the time, why did it require 13 years to allegedly complete  
29 the 2009 submission? What happened to these “competent services”?

30  
31 Mr President, Mauritius' ambiguous characterization of its 2022 submission as  
32 “partial”<sup>26</sup> – as well as the haste with which it made its 2021 and 2022 CLCS filings,  
33 and the age of the data it has conveyed to the CLCS – should give the Chamber  
34 pause; pause as to whether Mauritius has made its “final” submission in respect of  
35 the Chagos Archipelago.

36  
37 As explained in the Maldives' Rejoinder,<sup>27</sup> the preparation of Mauritius' April 2022  
38 submission suffered from a lack of input from qualified scientists and technical

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<sup>22</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 325 at pp. 336–337, para. 21.

<sup>23</sup> Robert Kolb, “General Principles of Procedural Law”, in Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary, Third Edition* (Oxford University Press, 2019), pp. 963–1006, at p. 978, para. 23(4).

<sup>24</sup> Rejoinder of the Republic of the Maldives (“MR<sub>ej</sub>”), para. 110.

<sup>25</sup> ITLOS/PV.22/C28/2, p. 9 (line 1) (Klein).

<sup>26</sup> MR, para. 4.3.

<sup>27</sup> MR<sub>ej</sub>, para. 99. The Maldives has reserved its right to formally respond to this submission in a note verbale, as it did in response to Mauritius' May 2021 preliminary information filing. See Diplomatic Note Ref. 2021/UN/N/16 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 15 July 2021 (MCM, Annex 63).

1 experts. By naming its legal counsel in this case as the sole “experts” for its 2022  
2 submission, Mauritius departed from common practice – as well as from its own  
3 submissions regarding other regions, as it can be seen on your screens, all of which  
4 credited former CLCS members and other respected scientists.<sup>28</sup>

5  
6 As it appears, while Mauritius credited work completed by scientific advisers in its  
7 previous filings, its 2022 submission indicates that its legal counsel in this case have  
8 prepared submissions – and indeed may prepare further submissions in respect of  
9 the northern Chagos Archipelago region. Yet, Mauritius asks the Special Chamber to  
10 rely upon this eleventh-hour filing to render a final and binding delimitation.

11  
12 The Special Chamber should not encourage parties in future cases to treat the  
13 deferral of jurisdictional questions as an opportunity to attempt to cure defects in  
14 their cases. In this respect, Mauritius’ approach has been strongly inconsistent with  
15 jurisprudence, principles of procedural fairness and established practice, including its  
16 own.

17  
18 Mr President, Members of the Special Chamber, this is the central disagreement  
19 between the parties: whether inadmissibility at the time of filing a Notification and  
20 Statement of Claim may be subsequently cured. Mauritius’ position on this finds no  
21 support in international practice. As the ICJ observed in *Oil Platforms* and the recent  
22 *ICAO Council* case, an objection to admissibility,

23  
24 consists in the contention that there exists a legal reason, even when there  
25 is jurisdiction, why the Court should decline to hear the case, or more  
26 usually, a specific claim therein. Such a reason is often of such a nature  
27 that the matter should be resolved *in limine litis*.<sup>29</sup>

28  
29 If the admissibility of Mauritius’ claim in the outer continental shelf has not been  
30 resolved *in limine litis* in this case, it is because Mauritius waited until after the  
31 Special Chamber’s Judgment on Preliminary Objections – and indeed, until its Reply  
32 – to make a CLCS submission corresponding to this claim, despite the fact that the  
33 data on which it relies has been available in the public domain for decades.

34  
35 But what is crucial – and indeed decisive in this case – is that, as with jurisdiction,  
36 admissibility is based on a “critical date”; the date on which proceedings were  
37 initiated. The jurisprudence on this point is clear. For instance, in the *Arrest Warrant*

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<sup>28</sup> These include: Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, March 2019, Doc MCSS-ES-DOC (MCM, Annex 6); Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Extended Continental Shelf in the Region of Rodrigues Island, Executive Summary, May 2009, Doc MRS-ES-DOC (“Partial Submission concerning the Region of Rodrigues Island”); Joint Submission to the Commission on the Limits of the Continental Shelf concerning the Mascarene Plateau, Republic of Seychelles and Republic of Mauritius, Executive Summary, December 2008, Doc SMS-ES-DOC (“Joint Submission with Seychelles concerning the Mascarene Plateau”).

<sup>29</sup> *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81 at p. 103, para. 55 (citing *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 161 at p. 177, para. 29).

1 case, the ICJ affirmed that “[u]nder settled jurisprudence the critical date for  
2 determining the admissibility of an application is the date on which it is filed”.<sup>30</sup>  
3

4 In other words, either Mauritius’ outer continental shelf claim was admissible when it  
5 instituted proceedings against the Maldives on 18 June 2019, or it is inadmissible  
6 today. There can be no doubt that Mauritius had not filed its CLCS submission on  
7 that critical date. There can be no doubt, therefore, that its claim was inadmissible  
8 then. Nor can there be any doubt that Mauritius cannot now “cure” that  
9 inadmissibility. That is the end of the matter. Mauritius has no answer for this  
10 obvious and inescapable conclusion, as evidenced by its intriguing silence on  
11 Monday.  
12

13 Mr President, Members of the Special Chamber, the Maldives has repeatedly asked  
14 only that this Chamber applies the settled jurisprudence. Nothing more and nothing  
15 less. When the jurisprudence states unequivocally that a claim is either admissible or  
16 inadmissible at the critical date, then there is nothing more that can be said. Even if  
17 there was an outer continental shelf dispute at the critical date – which is obviously  
18 not the case, as my colleagues have explained – Mauritius’ new claim must still fail  
19 because it did not make its CLCS submission until three years later.  
20

21 This brings me to the second reason for the inadmissibility of Mauritius’ request for  
22 delimitation beyond 200 nm: namely, its failure to comply with the mandatory time  
23 limits established by the Convention and the States Parties in respect of CLCS  
24 preliminary information. It is not in dispute between the Parties that the time limit  
25 fixed for Mauritius to file preliminary information elapsed in 2009. It is also not in  
26 dispute that Mauritius’ preliminary information depicted only what it has since dubbed  
27 the southern Chagos Archipelago region. It did so based on the same data that  
28 Mauritius used 13 years later for its submission on the northern region. The only  
29 question in dispute between the Parties is whether the 2009 preliminary information  
30 also covered the claim to an overlapping outer continental shelf with the Maldives.  
31 Let us recall the only figure provided in Mauritius’ 2009 preliminary information,  
32 which appears now on your screens.<sup>31</sup>  
33

34 As I will explain, Mauritius was required to lay out all – I repeat all – of its remaining  
35 outer continental shelf claims in preliminary information filings by 2009. It is thus  
36 unsurprising that its 2009 filing simply refers to “the Chagos Archipelago Region”.<sup>32</sup>  
37 What is surprising is that it bases its claim before the Special Chamber today on an  
38 area of the continental shelf far removed from the area depicted in its preliminary  
39 information. Its 2009 filing does not even depict the northern land features in the  
40 archipelago, let alone the continental shelf claim that Mauritius has since lodged on  
41 the basis of these features.

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<sup>30</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002*, p. 3 at pp. 17–18, para. 40. See also, *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, I.C.J. Reports 1988*, p. 69 at p. 95, para. 66. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 115 at pp. 130–131, paras. 43–44.

<sup>31</sup> See MCM, para. 63.

<sup>32</sup> Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (MCM, Annex 54).

1  
2 However, Mr President, honourable Members of the Special Chamber, the CLCS  
3 regime established under the Convention is no trivial matter to be dispensed with  
4 whenever it is convenient for a State Party to disregard the rules. It must be recalled  
5 that the Convention was painstakingly negotiated over almost a decade, from the  
6 first meeting of the Third Conference on the Law of the Sea in 1973 until the  
7 adoption of the final text in 1982.

8  
9 Article 76, paragraph 8, of the Convention established the process for CLCS  
10 submissions and mandates that these “shall be submitted by the coastal State” in  
11 accordance with Annex II to the Convention.<sup>33</sup> As my dear colleague and friend,  
12 Professor Sands recalled on Monday, “shall” means “shall”.<sup>34</sup> Annex II, in turn,  
13 mandates that a State claiming an outer continental shelf entitlement “shall submit  
14 particulars of such limits to the [CLCS] along with supporting scientific and technical  
15 data as soon as possible but in any case within 10 years of the entry into force of this  
16 Convention for that State.”<sup>35</sup>

17  
18 As you can see on your screens, the States Parties to the Convention (exceptionally  
19 refining this 10-year deadline in Annex II of the Convention) agreed on 20 June 2008  
20 that coastal States could further reserve their submissions only by filing before  
21 14 May 2009 “Preliminary Information indicative of the outer limits of the continental  
22 shelf beyond 200 nautical miles” and “a description of the status of preparation and  
23 intended date of making a submission”.<sup>36</sup>

24  
25 In accordance with these directions, Mauritius filed its Preliminary Information in  
26 respect of the Chagos Archipelago Region in May 2009. However, in its Reply  
27 Mauritius asserted that “[t]he Amended Preliminary Information submitted by  
28 Mauritius in May 2021 is ... properly identified and to be treated as the completion of  
29 the Preliminary Information submitted in 2009 on the Chagos Archipelago Region.”<sup>37</sup>  
30 Mauritius then argues, and this was repeated by Professor Klein on Monday, that its  
31 May 2021 preliminary information “plainly falls within the time limit set out” in the  
32 aforementioned decision of 20 June 2008,<sup>38</sup> through which the States Parties  
33 established and defined the Preliminary information procedure.

34  
35 Unlike the amendment of submissions to the CLCS, however, the States Parties  
36 made no allowance for the amendment of preliminary information. Doing so would  
37 have defeated the purpose of the May 2009 deadline; creating stability by achieving  
38 finality in the designation of outer continental shelf claims.<sup>39</sup> In particular, as recalled

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<sup>33</sup> UN Convention on the Law of the Sea, Article 76, para. 8. See further MCM, paras. 69–70.

<sup>34</sup> ITLOS/PV.22/C28/1, p. 38 (line 14) (Sands).

<sup>35</sup> UN Convention on the Law of the Sea, Annex II, Article 4 (emphasis added). See further MCM, para. 71.

<sup>36</sup> MCM, para. 76; United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, “Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)”, 20 June 2008, Doc SPLOS/183 (MCM, Annex 53).

<sup>37</sup> MR, para. 3.28.

<sup>38</sup> *Ibid.*

<sup>39</sup> See e.g. United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, “Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of

1 in Proelss' authoritative commentary, the drafters of the Convention foresaw that the  
2 International Seabed Authority's functioning would be inhibited if it did not know the  
3 boundaries of the common heritage of mankind.<sup>40</sup>

4  
5 The broader context of the Convention also reflects the Third Conference's intent  
6 that article 4 of Annex II achieve finality and promote stability.<sup>41</sup> Hence, article 76  
7 requires precise information from States claiming an outer continental shelf  
8 entitlement, including the identification of "fixed points, defined by coordinates of  
9 latitude and longitude".<sup>42</sup>

10  
11 The need for a time limit to achieve this certainty was clear from the earliest talks  
12 under the Convention to establish such a body under the Convention, as  
13 demonstrated by the *travaux préparatoires*.

14  
15 It was therefore with good reason that this time limit was integrated in article 76 and  
16 Annex II of the Convention. Importantly, the needs of developing countries were  
17 central to the establishment of the preliminary information procedure and fully taken  
18 into account when the States Parties set the final May 2009 deadline. Mauritius asks  
19 the Special Chamber to ignore, and thus contravene, the clear agreement of the  
20 States Parties when establishing the preliminary information procedure.

21  
22 Unlike its prior and contemporaneous submissions to the CLCS in respect of its  
23 claims elsewhere in the Indian Ocean,<sup>43</sup> Mauritius' 2009 preliminary information  
24 included no indications that this filing encompassed only a portion of its claim in the  
25 Chagos Archipelago region. In its Reply, Mauritius simply quotes a reference in its  
26 2009 preliminary information to its intention "to make a submission for an extended  
27 continental shelf in respect of the Chagos Archipelago Region",<sup>44</sup> and asserts that it  
28 "has now made such a submission".<sup>45</sup> From this language, Mauritius wrongly  
29 concludes, as did Professor Klein on Monday, that its May 2021 preliminary

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the Sea", 1 May 2001, Doc SPLOS/64 (MRJ, Annex 13), section VI entitled 'Reason for a coastal State to make a timely submission to the Commission', para. 46. This background paper was before the State Parties when considering the extended deadline in 2001. See United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Report of the eleventh Meeting of State Parties", 14 June 2021, Doc SPLOS/73 (MRJ, Annex 14), para. 69.

<sup>40</sup> Andrew Serdy, "Annex II: Commission on the Limits of the Continental Shelf", in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Nomos/Bloomsbury, 2017), article 4, pp. 2082–2083.

<sup>41</sup> United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf, 13 May 1999 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/171/08/IMG/N9917108.pdf?OpenElement>> accessed 16 October 2022, p. 72, para 9.1.4(a).; Andrew Serdy, "Annex II: Commission on the Limits of the Continental Shelf", in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Nomos/Bloomsbury, 2017), article 4, p. 2085.

<sup>42</sup> Art. 76, para. 7, of the Convention. See also *ibid.*, article 76, paras. 8–9.

<sup>43</sup> Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5), para. 2–1 (referring to the Joint Submission with Seychelles concerning the Mascarene Plateau and the Partial Submission concerning the Region of Rodrigues Island, which it communicated on the same date as its preliminary information filing).

<sup>44</sup> *Ibid.*, para. 2–2.

<sup>45</sup> MR, para. 3.29.

1 information “is therefore properly identified and to be treated as the completion of the  
2 Preliminary Information submitted in 2009”.<sup>46</sup>

3  
4 Yet, as the Maldives has shown, there is simply no factual or legal basis to draw this  
5 conclusion.<sup>47</sup> Mauritius referred in 2009 only to the prospect of a formal submission  
6 to the CLCS in respect of the already-indicated area (which it completed in 2019) —  
7 not to an additional preliminary information filing. Its May 2021 preliminary  
8 information, filed over 12 years after the States Parties’ deadline, without specifying  
9 an intended submission date as required, thus raises an entirely new outer  
10 continental shelf claim.<sup>48</sup>

11  
12 The Maldives raised all these matters in its Counter-Memorial. Mauritius’ response,  
13 in its Reply, was, however, inadequate. For example, the applicant argues, as you  
14 can see on your screens, that its 2021 preliminary information “appears on the CLCS  
15 website alongside the earlier submission, which makes clear that the 2021  
16 submission is to be treated as a clarification of the earlier 2009 submission”.<sup>49</sup> Of  
17 course, no inference can be drawn from how the States’ various preliminary  
18 information filings are arranged on the CLCS website.

19  
20 A note from the United Nations Secretariat, or more accurately a disclaimer,  
21 expressly states that it simply conveys these filings according to the States’ own  
22 designations, and that “[t]heir listing on this website and the presentation of material  
23 do not imply the expression of any opinion whatsoever on the part of the Secretariat  
24 of the United Nations” concerning their contents.<sup>50</sup> Rather, as the Secretariat puts it,  
25 “[t]he designations employed in preliminary information, including descriptions of the  
26 areas, *are as contained in the communications from submitting States*”.<sup>51</sup>

27  
28 The ordinary meaning of the terms “are as contained in the communication from  
29 submitting States” plainly indicates that the Secretariat merely posts the  
30 communications on this website without exercising editorial judgment, for which,  
31 indeed, there would be no basis. Read in its entirety, this disclaimer manifestly  
32 contradicts Professor Klein’s assertion that

33  
34 *(continued in French)*

35 this is solely in regard to the status of the areas concerned that the UN  
36 Secretariat does not intend to express a position, and not, as the Maldives  
37 claim, in regard to the contents of the document submitted by the States  
38 Parties.<sup>52</sup>

39  
40 *(Resumed in English)* Even if Mauritius’ argument had merit, it would then be fair to  
41 ask what significance should be drawn from the fact that, until last winter, and as you

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<sup>46</sup> *Ibid.*, para. 3.28.

<sup>47</sup> MRej, paras. 98–120.

<sup>48</sup> MCM, para. 77; MR, para. 3.26.

<sup>49</sup> MR, para. 3.28.

<sup>50</sup> United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles (note at base of page) <[https://www.un.org/depts/los/clcs\\_new/commission\\_preliminary.htm](https://www.un.org/depts/los/clcs_new/commission_preliminary.htm)> accessed 5 August 2022 (MRej, Annex 15).

<sup>51</sup> *Ibid.*

<sup>52</sup> TIDM/PV.22/A28/2, p. 10 (lines 36–39) (Klein).

1 can see on your screens, the Secretariat categorized Mauritius' 2009 and 2021  
2 preliminary information separately; not alongside each other, as they would later  
3 appear. The Internet Archive captured the Secretariat's preliminary information web  
4 page several times between May 2021 and April 2022. On all of these dates (until at  
5 least January of this year), the Secretariat distinguished Mauritius' 2009 and 2021  
6 preliminary information filings in two separate rows, as the only State to have  
7 attempted to file preliminary information concerning two separate geographic  
8 areas.<sup>53</sup>

9  
10 Mr President, as I have explained earlier, there is more at stake than mere  
11 compliance with purely procedural deadlines. Critically, if the Special Chamber were  
12 to accept Mauritius' proposed delimitation of the outer continental shelf, this will not  
13 produce the equitable result required under article 83 of the Convention. Rather, it  
14 will produce far-reaching consequences for the law of the sea, as States around the  
15 world would feel entitled to follow the brazen precedent set by Mauritius in this case.

16  
17 The States Parties to the Convention sought finality and stability in respect of outer  
18 continental shelf claims and, to this end, established time limits with which the  
19 Maldives and other States have duly complied. When it invoked a slight overlap with  
20 the EEZ in its 2011 formal protest to the Maldives' CLCS submission, Mauritius  
21 never raised any hint that it had a competing claim in the outer continental shelf, as  
22 you can see on your screen.

23  
24 Mr President, Members of the Special Chamber, ITLOS is the guardian of the  
25 Convention. It must uphold the express provisions of that "constitution for the  
26 oceans" and it must particularly uphold the CLCS regime to which the States Parties  
27 agreed after exceedingly careful negotiations. The deadlines associated with  
28 article 76 cannot be divorced from the general pacta of the Convention. Rather, they  
29 must be interpreted in light of the treaty's object and purpose — and must be fulfilled  
30 in good faith — in accordance with the customary rules of treaty interpretation.<sup>54</sup>

31  
32 Whether because it failed to file its CLCS submission at the critical date of seisin in  
33 2019 or because it failed to make any mention whatsoever of the "northern region" in  
34 its preliminary information a decade earlier, Mauritius' new claim to an outer  
35 continental shelf is clearly inadmissible. It must fail. It does not matter whether  
36 Mauritius' breaches of procedural rules and principles have been strategic or  
37 happenstance. What matters is that condoning these actions would simply normalize  
38 them.

39  
40 In light of the function of the CLCS time limits – the achievement of uniformity,  
41 fairness, predictability, stability, and finality – the question then is, will the Special  
42 Chamber preserve the Convention as a rules-based order? Or, with the greatest  
43 respect, will the Special Chamber decide against the values which underline this  
44 system's object and purpose?  
45

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<sup>53</sup> Internet Archive, Wayback Machine, "Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles", 20 January 2022  
<[https://web.archive.org/web/20220120093312/https://www.un.org/depts/los/clcs\\_new/commission\\_preliminary.htm](https://web.archive.org/web/20220120093312/https://www.un.org/depts/los/clcs_new/commission_preliminary.htm)> accessed 5 August 2022.

<sup>54</sup> Vienna Convention on the Law of Treaties (23 May 1969, Vienna), articles 26, 31.

1 Mr President, honourable Members of the Special Chamber, this is the question that  
2 will close my presentation. I appreciate your patience and kind attention. If you allow,  
3 this concludes the Maldives' pleadings for today. My colleague, Professor Akhavan,  
4 will address, tomorrow morning, how the irregularity of Mauritius' approach before  
5 both the Special Chamber and the CLCS reflects the fact that its alleged entitlement  
6 beyond 200 nm is manifestly unfounded, and inadmissible on this basis as well.

7

8 Thank you and good evening.

9

10 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Mbengue, for your  
11 statement.

12

13 This brings us to the end of this afternoon's sitting. The hearing will be resumed  
14 tomorrow morning at 10.00 am. The sitting is now closed. Good evening.

15

16

*(The sitting closed at 6.05 p.m.)*