



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Case No. 28

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

**THE REPUBLIC OF MAURITIUS / THE REPUBLIC OF MALDIVES**

**COUNTER-MEMORIAL OF THE REPUBLIC OF MALDIVES**

**VOLUME I**

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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>CHAPTER 1: BACKGROUND TO THE PRESENT PROCEEDINGS .....</b>	<b>5</b>
I. The broad geographical context for the Parties' maritime claims .....	5
A. The Maldives.....	7
B. Mauritius .....	9
II. The importance of fisheries with respect to the Parties' maritime claims.....	11
A. The Maldives.....	11
B. Mauritius .....	14
III. The relevant maritime claims of the Parties prior to commencement of proceedings .....	16
A. The Maldives.....	16
B. Mauritius .....	19
IV. The relevant exchanges regarding the maritime boundary prior to the commencement of proceedings .....	22
A. Introduction .....	22
B. The relevant exchanges .....	23
V. Conclusion .....	27
<b>CHAPTER 2: THE SCOPE OF THE DISPUTE OVER WHICH THE SPECIAL CHAMBER HAS JURISDICTION AND WHICH IS ADMISSIBLE.....</b>	<b>28</b>
I. The scope of the dispute identified by the Special Chamber in the Judgment on Preliminary Objections.....	28
II. Mauritius' claim to an OCS entitlement is neither within the Special Chamber's jurisdiction nor admissible .....	29
A. There was no dispute concerning Mauritius' alleged entitlement to an OCS in the 'Northern Chagos Archipelago Region' at the time it filed its application.....	30
B. Mauritius' claim in respect of its alleged OCS entitlement is inadmissible .....	34
III. Conclusion .....	45



<b>CHAPTER 3: THE GEOGRAPHICAL FEATURES RELEVANT TO THE DISPUTE</b>	
.....	<b>46</b>
I. The Maldives .....	46
II. Mauritius .....	48
 <b>CHAPTER 4: DELIMITATION OF THE EEZ AND CONTINENTAL SHELF WITHIN 200 M</b>	
<b>200 M .....</b>	<b>56</b>
I. The provisional delimitation line .....	58
A. The identification of the relevant coasts .....	58
B. The selection of base points .....	63
C. The provisional equidistance line .....	71
II. Relevant circumstances .....	73
III. No disproportionality .....	74
IV. The maritime boundary .....	77
V. Conclusion .....	79
 <b>CHAPTER 5: REMAINING DELIMITATION OF THE PARTIES' CONTINENTAL SHELVES</b>	
<b>SHELVES.....</b>	<b>80</b>
I. The Special Chamber can exercise its jurisdiction to carry out the delimitation in respect of the Maldives' OCS and Mauritius' continental shelf beyond point 46 ..	82
II. The delimitation of the Maldives' OCS and Mauritius' continental shelf beyond point 46 .....	83
III. Conclusion .....	88
 <b>SUBMISSIONS .....</b>	<b>89</b>
 <b>TABLE OF FIGURES.....</b>	<b>91</b>
<b>TABLE OF ANNEXES .....</b>	<b>93</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>100</b>
I. Publicly available cases (chronological order) .....	100
II. Publicly available legal submissions (chronological order) .....	101

## INTRODUCTION

1. The Republic of Maldives ('the Maldives') submits this Counter-Memorial in accordance with the time limit fixed by the Order of the Special Chamber dated 3 February 2021.
2. For the Maldives, the correct application of the United Nations Convention on the Law of the Sea ('UNCLOS') and the Part XV procedures is of critical importance. As an ancient sea-faring nation, its waters have always been, and continue to be, a vital resource for the survival of the Maldivian people. Eco-tourism and sustainable fisheries are integral to their livelihoods, with the preservation and protection of the marine environment enshrined in the Maldives' Constitution. The Maldives furthermore, has a long-standing record of leadership and multilateralism in this regard, including in respect of climate change and rising sea-levels, which threaten its very existence.
3. The Maldives has at all times pursued friendly relations with the Republic of Mauritius ('Mauritius') and sought to resolve matters of bilateral concern through negotiations conducted in good faith. As the Special Chamber's Judgment of 28 January 2021 on Preliminary Objections ('Judgment on Preliminary Objections') noted, "it is beyond doubt that there had been a long-standing sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago" and, therefore, that "the Maldives may have been justified in having reservations with respect to the existence of a dispute between it and Mauritius" in respect of maritime delimitation.<sup>1</sup> When Mauritius filed its Application on 18 June 2019 — less than one month after General Assembly resolution 73/295 of 22 May 2019<sup>2</sup> — the Maldives and numerous other members of the United Nations ('UN') were of the view that, in its 25 February 2019 Advisory Opinion on *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* ('Advisory Opinion'),<sup>3</sup> the International Court of Justice ('ICJ') did not purport to resolve that "long-standing sovereignty dispute".<sup>4</sup> Contrary to this view, the Special Chamber held that it could exercise jurisdiction in respect of the maritime delimitation sought by Mauritius, notwithstanding the continued sovereignty claim of the United Kingdom.
4. It may be recalled that, during the Preliminary Objections proceedings, the Maldives expressed its concern that Mauritius' case essentially concerned its sovereignty dispute with the United Kingdom, and not a maritime boundary dispute with the Maldives.<sup>5</sup> In fact, when the Special Chamber issued its Judgment, it was described by counsel for Mauritius as "a hammer blow to the United Kingdom".<sup>6</sup> Now that Mauritius has filed

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<sup>1</sup> *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment on Preliminary Objections, 28 January 2021 ('Judgment on Preliminary Objections'), paras. 242, 334.

<sup>2</sup> UNGA 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", 22 May 2019, A/RES/73/295 (**Annex 1**). See further Judgment on Preliminary Objections, para. 74.

<sup>3</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95.

<sup>4</sup> See Chapter 1, paras. 40, 48.

<sup>5</sup> See e.g. ITLOS/PV.20/C28/5/Rev.1, p. 1 (lines 12–24) (Akhavan).

<sup>6</sup> "ITLOS rules in favour of Mauritius following dispute over maritime boundaries", Matrix Chambers, 29 January 2021 <<https://www.matrixlaw.co.uk/news/itlos-rules-in-favour-of-mauritius-following-dispute-over-maritime-boundaries/>> accessed 24 November 2021 (**Annex 2**).

its Memorial, it is evident that the UNCLOS dispute falling within the jurisdiction of the Special Chamber is indeed very narrow.

5. The Judgment on Preliminary Objections made clear that the maritime boundary dispute between the Parties was limited to overlapping claims in the Exclusive Economic Zone ('EEZ') and continental shelf within 200 M of the Parties' baselines,<sup>7</sup> and a slight overlap between the Maldives' claim to an outer continental shelf ('OCS') beyond 200 M (made in its 2010 submission to the Commission on the Limits of the Continental Shelf ('CLCS')) and Mauritius' claim to an EEZ and continental shelf within 200 M. As set out below, the Parties agree that the 'equidistant/relevant circumstances' methodology applies to maritime delimitation but disagree on the relevance of a remote low-tide elevation ('LTE') in the Chagos Archipelago.
6. Mauritius has now attempted to significantly expand that narrow dispute by making an entirely new claim to an OCS. Specifically, on 24 May 2021, just one day before the time limit for filing its Memorial, Mauritius submitted preliminary information to the CLCS (some 12 years past the applicable time limit under UNCLOS), claiming for the first time an extensive area of overlap in the OCS claimed by the Maldives in its 2010 CLCS submission. Mauritius' new claim is plainly beyond the jurisdiction of the Special Chamber. There can be no doubt that a dispute concerning Mauritius' new OCS claim did not exist when Mauritius instituted proceedings in June 2019. Mauritius' new claim is also manifestly inadmissible. It has not filed its CLCS submission consistent with its obligations under UNCLOS, its claim of entitlement under Article 76 is based entirely on the natural prolongation of *the Maldives'* submerged land territory, and its baseless proposal that the delimitation be carried out by simply dividing the area of overlapping claims in half requires prior delineation of the outer limits of the OCS, a task which is beyond the competence of the Special Chamber.
7. The Maldives further notes that Mauritius has abandoned its claim regarding Articles 74(3) and 83(3) of UNCLOS, which was in any event without any basis in fact or in law.
8. Thus, the only dispute before this Chamber is the delimitation of the maritime boundary in the Parties' EEZs and continental shelves within 200 M, and the overlap arising from the Maldives' OCS claim noted above.
9. As to the delimitation of the overlapping entitlements of the Parties in the EEZ and continental shelf within 200 M, the Parties are in agreement that the well-established three-stage methodology for delimitation should apply.<sup>8</sup> They are in disagreement, however, as to whether Blenheim Reef — an LTE 10.58 M from the nearest island of the Chagos Archipelago — should be treated as part of the relevant coast and/or as generating base points for the construction of a provisional equidistance line, giving Mauritius an additional 4,690 km<sup>2</sup> of maritime area. As the Maldives demonstrates below, the relevant jurisprudence makes clear that LTEs — even in the immediate

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<sup>7</sup> In this Counter-Memorial, nautical miles are denoted by 'M'.

<sup>8</sup> As the Tribunal will be aware, this involves drawing a provisional equidistance line and considering adjustments based on relevant circumstances and disproportionality. See further Chapter 4, Sections I–III below.

proximity of land territory, unlike Blenheim Reef — are not part of the relevant coast and should not be used to generate base points for the purpose of delimitation.

10. As to the overlap arising from the Maldives' OCS claim, the same three-stage methodology should be applied to draw a directional equidistance line to delimit the Parties' respective entitlements to the continental shelf (which can occur without delineation of the outer limits of the Maldives' OCS entitlement, which are to be established following recommendations by the CLCS).

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11. This Counter-Memorial consists of three volumes as follows:
  - (a) **Volume I** contains the text of the Counter-Memorial together with illustrative charts and figures.
  - (b) **Volume II** contains the full set of charts and figures that accompany the text of the Counter-Memorial.
  - (c) **Volume III** contains the annexes to the Counter-Memorial.
12. Volume I consists of this introduction, followed by five chapters, and concludes with the Maldives' submissions. The chapters are organised as follows:
  - (a) **Chapter 1** sets out the relevant background to the proceedings. Specifically, it addresses the broad geographical context for the Parties' maritime claims (Section I); the importance of fisheries with respect to their maritime claims (Section II); the maritime claims of the Parties prior to the commencement of proceedings (Section III); and the relevant exchanges regarding the maritime boundary prior to the commencement of proceedings (Section IV).
  - (b) **Chapter 2** addresses the scope of the dispute which falls within the Special Chamber's jurisdiction and which is admissible. It starts by explaining the dispute which existed when Mauritius instituted the present proceedings, as reflected in the Special Chamber's Judgment on Preliminary Objections (Section I). It proceeds to explain why Mauritius' new claim to an alleged OCS entitlement, which it raised one day before it filed its Memorial, is neither within the Special Chamber's jurisdiction nor admissible (Section II).
  - (c) **Chapter 3** addresses the geographical features relevant to the dispute. As regards the Maldives, these features consist of Addu Atoll, the Maldives' southernmost island, and Fuvahmulah, an island located approximately 19.8 M north-east of Addu Atoll (Section I). As regards Mauritius, there are four features of the Chagos Archipelago relevant to the dispute, namely Peros Banhos Atoll, the Salomon Islands Atoll, Nelson's Island and Blenheim Reef (Section II).
  - (d) **Chapter 4** addresses the delimitation of the Parties' respective EEZs and continental shelves within 200 M. It explains that while the Parties agree on the three-stage methodology, the Maldives does not agree with its application by

Mauritius. Specifically, Blenheim Reef does not form part of the relevant coast and in any event is not an appropriate site for base points for construction of the equidistance line (Section I). Once the provisional equidistance line is properly constructed, there are no relevant circumstances that would justify any adjustment of that line (Section II). Further, there is no disproportionality that would merit an adjustment of the equidistance line constructed by the Maldives (Section III). The Maldives concludes this chapter by setting out the maritime boundary in respect of these maritime areas (Section IV).

- (e) **Chapter 5** addresses the delimitation between the Parties' respective continental shelf entitlements outside of the overlapping EEZ area covered in Chapter 4. It confirms that the Maldives' claimed OCS entitlement is within the Special Chamber's jurisdiction and is otherwise admissible (Section I). It proceeds to identify the directional equidistance line of delimitation which the Maldives invites the Special Chamber to draw on the basis of the standard three-stage methodology (Section II).

## CHAPTER 1: BACKGROUND TO THE PRESENT PROCEEDINGS

13. This Chapter addresses the relevant background to the present proceedings. It is divided into four sections as follows:
- (a) The broad geographical context for the Parties' maritime claims (**Section I**);<sup>9</sup>
  - (b) The importance of fisheries with respect to the Parties' maritime claims (**Section II**);
  - (c) The maritime claims of the Parties prior to the commencement of proceedings (**Section III**); and
  - (d) The relevant exchanges regarding the maritime boundary prior to commencement of proceedings (**Section IV**).

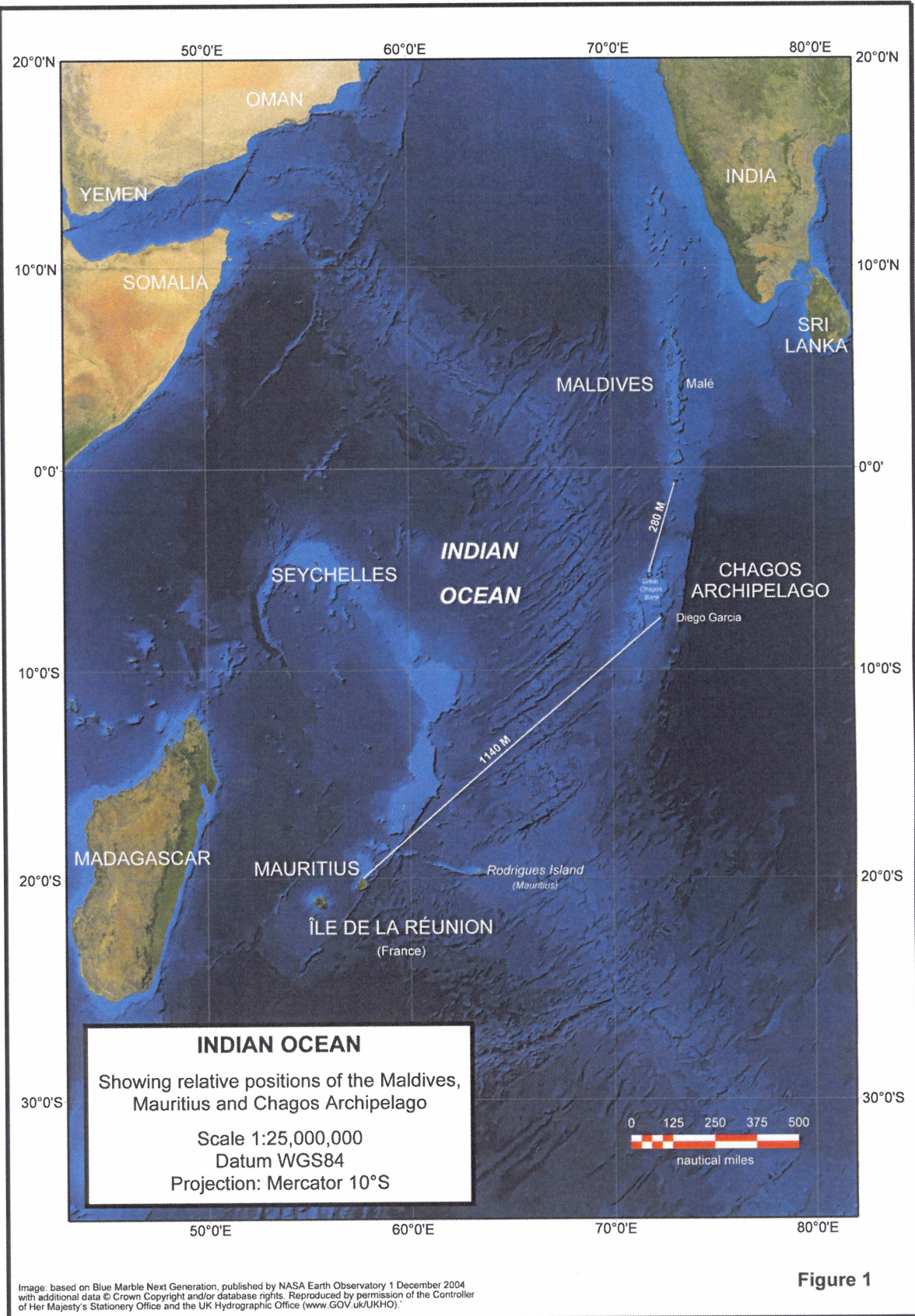
### **I. The broad geographical context for the Parties' maritime claims**

14. The Indian Ocean, in which both Mauritius and the Maldives are located, is the world's third-largest ocean (see Figure 1 below). It covers a total area of approximately 70.6 million km<sup>2</sup>.

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<sup>9</sup> In Chapter 3, there is a more detailed analysis of specific geographical features which are relevant to the dispute.





## A. The Maldives

15. A small but ancient island nation, the Maldives was originally settled in the fifth century BC by fishermen from the coasts of India and Sri Lanka.<sup>10</sup> Its population today is approximately 568,000, dispersed across approximately 200 of its islands.<sup>11</sup> At its southernmost point, the Maldives is located 280 M from the Chagos Archipelago (see Figure 1 above).<sup>12</sup> To the north, it is approximately 230 M west-southwest of India and 380 M west of Sri Lanka. Its territory consists of an archipelago of 1,190 coral islands which are grouped within 26 atolls, ranging in size from 3 km<sup>2</sup> to 3,200 km<sup>2</sup>.<sup>13</sup> As shown on Figure 2 below, its southernmost atoll is Addu Atoll which is 14.93 km<sup>2</sup> in size.<sup>14</sup> The land area of all the islands amounts to 227 km<sup>2</sup>, spread over a total maritime area within the archipelagic baselines of approximately 73,430 km<sup>2</sup>.<sup>15</sup> The Maldives' EEZ covers some 855,638 km<sup>2</sup> and the OCS which it claims (but the outer limits of which have yet to be delineated) covers 164,579 km<sup>2</sup>.

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<sup>10</sup> Following the suzerainty of Ceylon (now Sri Lanka) the Maldives came under British protection in 1887, gaining independence in 1965.

<sup>11</sup> Malé, the capital city, lies to the north of the centre of the atoll chain and has a population of approximately 234,450.

<sup>12</sup> Mauritius' statement that the distance between the Maldives and the Chagos Archipelago is 269 M (Memorial, para. 2.6(e)) is understood to be based on the distance being measured from Blenheim Reef. The Maldives' measurement is based on the nearest island in the Chagos Archipelago.

<sup>13</sup> Some of the Maldives' atolls have dunes reaching 2.4 m above sea level, but it is otherwise flat. On average, the Maldives' land territory lies 1–1.5 m above sea level. Each atoll is located around an internal lagoon. The main lagoon water depths of the larger atolls are an average of 40–60 m.

<sup>14</sup> See further Chapter 3, para. 97.

<sup>15</sup> In the central part of the archipelago, the internal basin between the two chains is known as the Inner Sea. It does not exceed 500 m in depth.



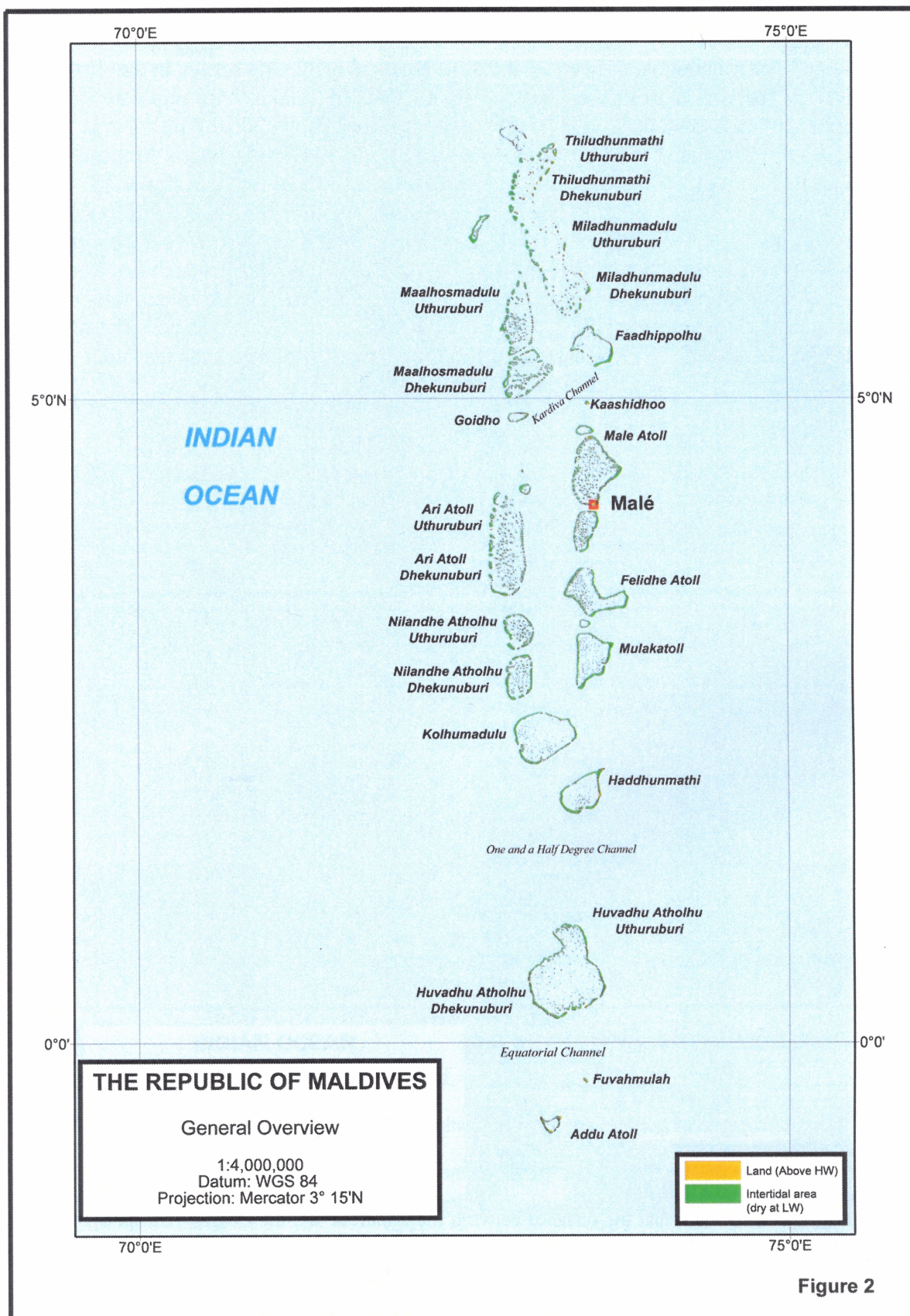


Figure 2

## B. Mauritius

16. The main territory of Mauritius is located 1,140 M from the Chagos Archipelago<sup>16</sup> (see Figure 1 above), just over 610 M east of Madagascar, off the south-eastern coast of Africa. In addition to its main island, the territory of Mauritius also includes the islands of Cargados Carajos, Rodrigues Island, Agalaea and Tromelin, comprising a total of 2,030 km<sup>2</sup>.<sup>17</sup> Mauritius states that its population is 1.27 million.<sup>18</sup>
17. The Special Chamber has determined that, with respect to the Chagos Archipelago, Mauritius is the State with an opposite coast to the Maldives for the purposes of delimitation under UNCLOS.<sup>19</sup> The Chagos Archipelago comprises approximately 55 islands, with a total land territory of 48.7 km<sup>2</sup>, forming approximately 2.3% of Mauritius' total land territory.<sup>20</sup> The archipelago is depicted on Figure 3 below. The Chagos Archipelago currently has no permanent population. Its approximately 1,500 former inhabitants<sup>21</sup> were forcibly removed by the United Kingdom between 1967 and 1973.<sup>22</sup>
18. Mauritius' claimed EEZ covers some 1.9 million km<sup>2</sup>,<sup>23</sup> and the OCS currently claimed by Mauritius in its preliminary information and submissions to the CLCS covers some 767,220 km<sup>2</sup>.<sup>24</sup>

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<sup>16</sup> It is noted that Mauritius' official government website presents a slightly different figure of 2,200 km (approximately 1,190 M) (Official governmental website of the Republic of Mauritius, "About Chagos Archipelago" <<https://govmu.org/EN/Pages/AboutChagos.aspx>> accessed 24 November 2021 (**Annex 3**)).

<sup>17</sup> The Chagos Archipelago is addressed separately below. Including the Chagos Archipelago, Mauritius' land territory is approximately 2,078 km<sup>2</sup>.

<sup>18</sup> Memorial of Mauritius, para. 2.4.

<sup>19</sup> Judgment on Preliminary Objections, para. 250. See also para. 246 stating that "[w]hile the process of decolonization has yet to be completed, Mauritius' sovereignty over the Chagos Archipelago can be inferred from the ICJ's determinations".

<sup>20</sup> This figure is calculated on the basis that the Chagos Archipelago is included in Mauritius' total land territory.

<sup>21</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of Mauritius, 1 March 2018, footnote 360. See also Memorial of Mauritius, para. 2.16 noting that "[i]n 1960, Peros Banhos Atoll had a population of no less than 374" and para. 2.19 noting a former population on the Salomon Islands Atoll of approximately 200.

<sup>22</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p. 95, at p. 110, para. 43.

<sup>23</sup> Food and Agriculture Organization of the United Nations, Fishery Country Profile of the Republic of Mauritius, January 2006 <[https://www.fao.org/fishery/docs/DOCUMENT/fcp/en/FI\\_CP\\_MU.pdf](https://www.fao.org/fishery/docs/DOCUMENT/fcp/en/FI_CP_MU.pdf)> accessed 24 November 2021 (**Annex 4**).

<sup>24</sup> This comprises Mauritius' claim in relation to the regions: (i) to the north of the Chagos Archipelago of 23,220 km<sup>2</sup>; (ii) to the south of the Chagos Archipelago of 175,000 km<sup>2</sup>; (iii) of Rodrigues Island of 169,000 km<sup>2</sup>; and (iv) of the Mascarene Plateau of 400,000 km<sup>2</sup>. See 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 (**Annex 5**); 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 (**Annex 6**). See also Memorial of Mauritius, para. 2.38.



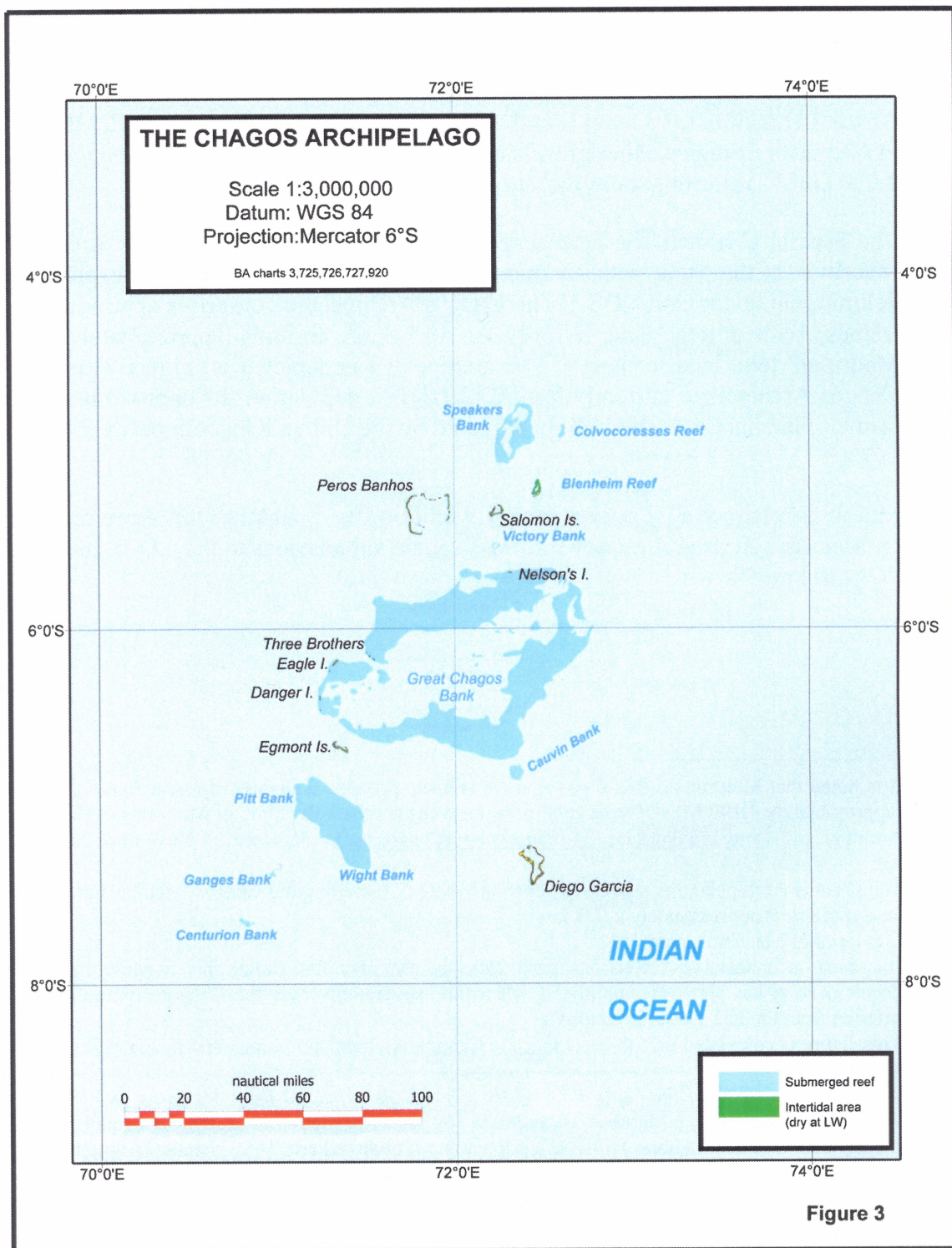


Figure 3

## II. The importance of fisheries with respect to the Parties' maritime claims

### A. The Maldives

19. The livelihood of the people of the Maldives depends fundamentally on the sustainability and security of the oceans. Eco-tourism and fishing industries (notably tuna fisheries) are mainstays of its economy<sup>25</sup> and fish (mainly tuna) is a food staple for its people. Safeguarding these resources has always been of the utmost importance to the Maldivian Government and people. As stated in the Maldives' Constitution:

“The State has a fundamental duty to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. The State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals.”<sup>26</sup>

20. Reflecting the importance of its marine resources, the Maldives has adopted a proactive approach to responsible fishing and management of its EEZ. This is demonstrated by the Maldives' commitment to:

- (a) Sustainability in the fishery industry generally: for example, in 2016 it established the Sustainable Development Goal ('SDG') Division under the Ministry of Environment and Energy<sup>27</sup> and it co-champions the Commonwealth Blue Charter Action Group on Sustainable Coastal Fisheries.<sup>28</sup> All commercial fisheries conducted in the Maldives are managed pursuant to fisheries management plans developed under the Fisheries Act of the Maldives. The Maldives also prohibits the use of chemicals, poisons and explosives for fishing.<sup>29</sup> The Maldives has also promulgated a code of 'best practice' in

<sup>25</sup> The Maldives' special relationship with the ocean and the ways it has profoundly shaped its identity was addressed by the Maldives' Agent at the Preliminary Objections hearing. See ITLOS/PV.20/C28/1/Rev.1, p. 5 (lines 11–22) (Riffath). The Maldives' agricultural land features a sandy and alkaline soil and with no hills or rivers, and freshwater is limited to a subterranean lens floating above the seawater. This compounds the Maldives' reliance on the marine waters.

<sup>26</sup> Constitution of the Republic of Maldives, 2008 <<http://extwprlegs1.fao.org/docs/pdf/mdv136135.pdf>> accessed 24 November 2021 (**Annex 7**), Article 22. See also the Environment Protection and Preservation Act of the Maldives (Law No. 4/93, as amended by Law No. 12/2014) (**Annex 8**), Art. 1, which provides: “The natural environment and its resources are a national heritage that needs to be protected and preserved for the benefit of future generations. The protection and preservation of the countries land and water resources, flora and fauna as well as the beaches, reefs, lagoons and all natural habitats are important for the sustainable development of the country.”

<sup>27</sup> See United Nations, Sustainable Development Goals, “Maldives: Taking Action for Sustainable Development”, July 2017 <[https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/07/Maldives\\_Government.pdf](https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/07/Maldives_Government.pdf)> accessed 24 November 2021 (**Annex 9**). SDG14 is to “[c]onserve and sustainably use the oceans, seas and marine resources for sustainable development”. The Commonwealth Blue Charter, “Maldives to co-champion action on coastal fisheries for Commonwealth”, 4 January 2021 <<https://bluecharter.thecommonwealth.org/maldives-to-co-champion-action-on-coastal-fisheries-for-commonwealth/>> accessed 24 November 2021 (**Annex 10**).

<sup>29</sup> Fisheries Act of the Maldives (Act No. 14/2019) <<https://www.gov.mv/en/files/fisheries-act-of-the-maldives.pdf>> accessed 24 November 2021 (**Annex 11**), s. 27(e).

relation to fisheries that focuses on the protection of the environment, reducing wastage of marine resources and conserving marine resources.<sup>30</sup>

- (b) Sustainability in tuna fisheries specifically: for example, the vast majority of tuna fishing in the Maldives utilises sustainable and highly selective gears such as pole-and-line and handline, with a prohibition of any form of commercial net fishing,<sup>31</sup> with foreign fishing licences in its EEZ discontinued for over a decade and now prohibited;<sup>32</sup> it has taken concrete steps to reduce yellowfin tuna catch;<sup>33</sup> it received the Marine Stewardship Council Certificate with respect to pole-and-line skipjack tuna fisheries;<sup>34</sup> and in 2017, pole-and-line fishery based operations in five Maldivian islands were also awarded the Fair Trade Certification, making them one of the very few seafood supply chains to hold both certifications. Most Maldivian skipjack tuna and yellowfin tuna exports also bear the Dolphin-Safe label, issued by the Earth Island Institute. At the Indian Ocean Tuna Commission ('IOTC') annual meeting of 2021 (the 25<sup>th</sup> session), among some 30 States parties,<sup>35</sup> it was the Maldives that led a proposal to save the overfished Indian Ocean yellowfin tuna.<sup>36</sup> That proposal was

<sup>30</sup> General Fisheries Regulation of the Maldives (Regulation No. 2020/R-75) (**Annex 12**), Chapter 5.

<sup>31</sup> Fisheries Act of the Maldives (Act No. 14/2019) <<https://www.gov.mv/en/files/fisheries-act-of-the-maldives.pdf>> accessed 24 November 2021 (**Annex 11**), s. 27. See further 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 24 November 2021 (**Annex 13**), pp. 68–69 and Marine Stewardship Council, “Tuna Fishing in the Maldives”, October 2017 <<http://tuna-fishing-maldives-stories.msc.org/>> accessed 24 November 2021 (**Annex 14**).

<sup>32</sup> In 2009, the Government of the Maldives decided to discontinue the issuance/renewal of fishing licences for foreign flagged longline vessels in the Maldivian EEZ. The last of these licenses expired in 2010, and no further licenses have been issued for vessels registered overseas since then. Section 36 (c) of the Fisheries Act of the Maldives expressly states that licenses to fish in Maldivian waters shall not be granted to foreign fishing vessels: Fisheries Act of the Maldives (Act No. 14/2019) <<https://www.gov.mv/en/files/fisheries-act-of-the-maldives.pdf>> accessed 24 November 2021 (**Annex 11**), s. 36(c).

<sup>33</sup> See e.g., *ibid.*, ss. 18–19; 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 24 November 2021 (**Annex 13**), p. 69.

<sup>34</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 24 November 2021 (**Annex 15**).

<sup>35</sup> Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, “Structure of the Commission” <<https://www.iotc.org/about-iotc/structure-commission>> accessed 24 November 2021 (**Annex 16**).

<sup>36</sup> Food and Agriculture Organization of the United Nations, India 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 24 November 2021 (**Annex 17**). The proposal was co-sponsored by Kenya, South Africa and Comoros. The Maldives also provided a proposal on harvest control rules for skipjack tuna in the IOTC area of competence: 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 24 November

described in a Joint Statement of various NGOs as “more ambitious and equitable” than the proposal tabled by the EU.<sup>37</sup>

21. The significance of the Maldives’ maritime areas is heightened because of climate change which threatens the Maldives’ very existence.<sup>38</sup> In its 5 November 2020 response to the report of the International Law Commission on Sea Level Rise, the Maldives noted that “[a]s a small island country with low-lying coasts, the Maldives has long advocated for action by the international community and sought to draw attention to the severe impacts of sea-level rise on [Small Island Developing States (‘SIDS’)]”.<sup>39</sup> It noted in that context the importance of maintaining fixed baselines and maritime entitlements, to ensure stability in the face of subsequent physical changes to a State’s geography as a result of sea level rise.<sup>40</sup>

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2021 (**Annex 18**). In the documents listed on the IOTC website for the annual meeting, there are four statements from Mauritius, all of which concern its position on sovereignty over the Chagos Archipelago (noting the agenda listed Participation of the United Kingdom as a coastal State vis-à-vis “BIOT” and Implementation of paragraph 6 of the UNGA Resolution 73/295 (FAO)). See Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, 25th Session of the Indian Ocean Tuna Commission, 2021 <<https://www.iotc.org/meetings/25th-session-indian-ocean-tuna-commission>> accessed 24 November 2021 (**Annex 19**); “Mauritius Statement under Item 2 IOTC 25th Session”, Doc IOTC-2021-S25-Statement02, 4 June 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement02E - Mauritius Statement under item 2 IOTC 25th Session.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement02E_Mauritius%20Statement%20under%20item%202%20IOTC%2025th%20Session.pdf)> (**Annex 20**); “Mauritius Statement under Item 14.2 IOTC 25th Session”, Doc IOTC-2021-S25-Statement03, 4 June 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement03E - Mauritius Statement under item 14.2 IOTC 25th Session.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement03E_Mauritius%20Statement%20under%20item%2014.2%20IOTC%2025th%20Session.pdf)> (**Annex 21**); “Mauritius Statement under item 14.3 IOTC 25th Session”, Doc IOTC-2021-S25-Statement04, 4 June 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement04E - Mauritius Statement under item 14.3 IOTC 25th Session.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement04E_Mauritius%20Statement%20under%20item%2014.3%20IOTC%2025th%20Session.pdf)> (**Annex 22**); “Mauritius — Note Verbale IOTC”, Doc IOTC-2021-S25-Statement06, 8 June 2021 <[https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement06E - Mauritius - Note Verbale IOTC.pdf](https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-Statement06E_Mauritius%20Note%20Verbale%20IOTC.pdf)> (**Annex 23**).

<sup>37</sup> International Pole & Line Foundation, “Joint NGO Statement on the urgency of adopting an interim plan for rebuilding the Indian Ocean yellowfin tuna stock”, 3 June 2021 <<http://ipnlf.org/news/joint-ngo-statement-on-the-urgency-of-adopting-an-interim-plan-for-rebuilding-the-indian-ocean-yellowfin-tuna-stock>> accessed 24 November 2021 (**Annex 24**).

<sup>38</sup> As noted above, on average, the Maldives’ land territory lies 1–1.5 m above sea level leaving the Maldives particularly vulnerable. See e.g. IMPACT2C, Policy Brief “Effects of 2°C Warming”, November 2015 <[https://www.climate-service-center.de/imperia/md/content/csc/impactc\\_policy\\_brief\\_3.pdf](https://www.climate-service-center.de/imperia/md/content/csc/impactc_policy_brief_3.pdf)> accessed 24 November 2021 (**Annex 25**), noting that the Maldives “is widely recognised as one of the most vulnerable to climate change”. See also Sally Brown and others, “Land raising as a solution to sea-level rise: An analysis of coastal flooding on an artificial island in the Maldives” (2019) 13 J. of Flood Risk Management 1 (**Annex 26**).

<sup>39</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, p. 3 <[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 24 November 2021 (**Annex 27**). Previously, on 31 December 2019, the Maldives submitted information and examples of State practice on “Sea-level rise in relation to international law” before the International Law Commission: International Law Commission, 72nd session, 26 April–6 August 2021, Comments by the Republic of Maldives on sea-level rise in relation to international law, Doc 2019/UN/N/50 <[https://legal.un.org/ilc/sessions/72/pdfs/english/slr\\_the\\_Maldives.pdf](https://legal.un.org/ilc/sessions/72/pdfs/english/slr_the_Maldives.pdf)> accessed 24 November 2021 (**Annex 28**).

<sup>40</sup> This issue was addressed *inter alia* in 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->



22. The Maldives' long-standing leadership on climate change includes its establishment of the Alliance of Small Islands States ('AOSIS') in 1990, following its hosting in 1989 of the first-ever Small States Conference on Sea Level Rise, where fourteen Small Island States signed the Malé Declaration on Global Warming and Sea Level Rise. The Maldives served as the Chair of the AOSIS from 2015 to 2018 during which period important multilateral negotiations were held, including concerning the Paris Agreement on reducing greenhouse gas emissions, the SDGs and the Sendai Framework for Disaster Risk Reduction 2015–2030. The Maldives remains an active member of the AOSIS, having declared with Nauru and St Lucia new Climate Action Plans on the 30<sup>th</sup> anniversary of that Alliance.<sup>41</sup> The Maldives also founded the Climate Vulnerable Forum in 2009, which it chaired from 2009–2010 and in which it continues to participate. In 2019, the Maldives also presented a Climate Smart Resilient Islands initiative before the UN General Assembly.<sup>42</sup>

#### B. Mauritius

23. The fishing industry is a mainstay of Mauritius' economy.<sup>43</sup> In 2020 Mauritius made clear its plans to maximise the profit it derived from fisheries by developing its national catching capacity.<sup>44</sup> It has permitted Japan to use Mauritius as a base to conduct large-scale industrial fishing,<sup>45</sup> with Chinese fishing vessels also present.<sup>46</sup>
24. The coral reef ecosystems of the Indian Ocean spread over approximately 200,000 km<sup>2</sup> (accounting for 30% of the global coral reef cover).<sup>47</sup> The seabed of the Chagos Archipelago, including the Great Chagos Bank (the world's largest coral atoll

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[climate-change-related-sea-level-rise/?fbclid=IwAR2qm6eYh2hQ0gXkBOOsLMxcjvKWKzFfvr6b5jEtu7mmu0bxO805KpMi654>](https://www.aosis.org/release/nauru-maldives-and-st-lucia-announce-new-climate-action-plans/)  
accessed 24 November 2021 (**Annex 29**).

- 41 Alliance of Small Island States, "Press release: Nauru, Maldives, and St Lucia announce new Climate Action Plans", 4 December 2021 <<https://www.aosis.org/release/nauru-maldives-and-st-lucia-announce-new-climate-action-plans/>> accessed 24 November 2021 (**Annex 30**).
- 42 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 24 November 2021 (**Annex 31**).
- 43 The IOTC records that in 2019 Mauritius had 3 purse seiners, 1 supply vessel and 15 semi-industrial longliners operating in the tuna fishery: 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 24 November 2021 (**Annex 13**), p. 69.
- 44 Coalition for Fair Fisheries Arrangements, "Key issues for EU-Mauritius SFPAs negotiations: Tuna stocks sustainability, post-covid19 recovery for the local sector and transparency", 6 April 2021, p. 1 <<https://www.cffacape.org/publications-blog/key-issues-for-eu-mauritius-sfpa-negotiations-tuna-stocks-sustainability-post-covid19-recovery-for-the-local-sector-and-transparency>> accessed 24 November 2021 (**Annex 32**).
- 45 *Ibid.*; "Satellites Reveal Japan's Mauritius Base for Africa Fishing Operations", *Forbes*, 14 December 2020 <<https://www.forbes.com/sites/nishandegnarain/2020/12/14/japan-vs-nature-satellites-reveal-japans-mauritius-base-for-africa-fishing-operations/?sh=5d9b2d726be7>> accessed 24 November 2021 (**Annex 33**). This latter article features a satellite analysis showing the use of Mauritius by Japanese fishing fleets.
- 46 "Mauritius: Grounded Chinese flagged fishing vessel response", *Africanews*, 3 September 2021 <<https://www.africanews.com/2021/03/09/mauritius-grounded-chinese-flagged-fishing-vessel-response/>> accessed 24 November 2021 (**Annex 34**).
- 47 Mohideen Wafar and others, "State of Knowledge of Coastal and Marine Biodiversity of Indian Ocean Countries" (2011) 6 PLoS ONE e14613 (**Annex 35**).

structure<sup>48</sup>) contains more than 10% of all Indian Ocean seamounts,<sup>49</sup> and has some of the most biodiverse waters on the planet with over 300 species of coral, over 700 species of fish and 300 species of molluscs.<sup>50</sup> Noting potential connectivity between the different ecosystems in the Indian Ocean,<sup>51</sup> the risk of fishing and/or harm caused in the Chagos Archipelago affecting fish stocks and ecosystems throughout the Indian Ocean cannot be discounted.

25. Mauritius does not currently exercise jurisdiction over the Chagos Archipelago. The United Kingdom continues to administer it as the British Indian Ocean Territory ('BIOT'), and the Marine Protected Area ('MPA') declared in 2010 by the BIOT Commissioner — including enforcement of a 'no-take' policy, i.e. a prohibition on all commercial fishing and extractive activities — currently remains in place.<sup>52</sup> The Maldives is unaware of any binding commitment from Mauritius as to its maintenance of a no-take MPA or as to what precise measures it has committed to take to ensure the protection of the marine environment in the Chagos Archipelago, including measures to ensure compliance with its obligation under *inter alia* Article 64 of UNCLOS concerning the conservation and optimum utilisation of highly migratory species.<sup>53</sup> Given that tuna is a highly migratory species,<sup>54</sup> the Maldives has a serious concern with

<sup>48</sup> Memorial of Mauritius, para. 2.13.

<sup>49</sup> Charles Sheppard and others, "Reefs and islands of the Chagos Archipelago, Indian Ocean: why it is the world's largest no-take marine protected area" (2012) 22 Aquatic Conserv: Mar. Freshw. Ecosyst. 232 (Annex 36). See also Heather Koldewey and others, "Potential benefits to fisheries and biodiversity of the Chagos Archipelago/British Indian Ocean Territory as a no-take marine reserve" (2010) 60 Marine Pollution Bulletin 1906 (Annex 37), p. 1906 ("the deep oceanic waters around the Chagos/ BIOT, out to the 200-mile exclusive economic zone (EEZ), include an exceptional diversity of undersea geological features including submarine mountains, mid-ocean ridges, trenches deeper than 6000 m, and a broad abyssal plain").

<sup>50</sup> British Indian Ocean Territory, "Marine Protected Area" <<https://biot.gov.io/environment/marine-protected-area/>> accessed 24 November 2021 (Annex 38); Chagos Conservation Trust, "The Chagos Archipelago" <<https://chagos-trust.org/chagos/overview>> accessed 24 November 2021 (Annex 39); Khaled bin Sultan Living Oceans Foundation, "Global Reef Expedition: Chagos Archipelago", 24 February 2021 <[https://issuu.com/livingoceansfoundation/docs/gre\\_chagos\\_final\\_report](https://issuu.com/livingoceansfoundation/docs/gre_chagos_final_report)> accessed 24 November 2021 (Annex 40).

<sup>51</sup> Khaled bin Sultan Living Oceans Foundation, "Global Reef Expedition: Chagos Archipelago", 24 February 2021 <[https://issuu.com/livingoceansfoundation/docs/gre\\_chagos\\_final\\_report](https://issuu.com/livingoceansfoundation/docs/gre_chagos_final_report)> accessed 24 November 2021 (Annex 40), p. 6 ("[i]t is speculated that the centralized location within the Indian Ocean allows the Chagos Archipelago to play a crucial role in linking the reefs of the Indo-Pacific, western, and northern Indian Ocean. The connectivity of the reefs in the Chagos Archipelago to the rest of the ocean, and possibly into the Pacific as well, emphasizes the importance of its conservation").

<sup>52</sup> British Indian Ocean Territory, "Marine Protected Area" <<https://biot.gov.io/environment/marine-protected-area/>> accessed 24 November 2021 (Annex 38).

<sup>53</sup> UNCLOS Article 64 provides: "1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work. 2. The provisions of paragraph 1 apply in addition to the other provisions of this Part."

<sup>54</sup> Annex I of UNCLOS lists 17 highly migratory species, the first eight of which are types of tuna, including the two main target species of the Maldives' tuna fishing industry, namely skipjack tuna (*Katsuwonus pelamis*) and yellowfin tuna (*Thunnus albacares*). See 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



the grave impact which industrial fishing in the Chagos Archipelago may have on tuna stocks.

### III. The relevant maritime claims of the Parties prior to commencement of proceedings

#### A. The Maldives

26. The Maldives is a party to UNCLOS, having ratified it on 7 September 2000.
27. In 1976, the Maldives concluded maritime boundary agreements with India and Sri Lanka,<sup>55</sup> and it continues to cooperate with them on maritime issues, reflecting its good neighbourly relations.<sup>56</sup>
28. Pursuant to its Maritime Zones Act No. 6/96 (dated 1996)<sup>57</sup> ('the 1996 Act') the Maldives established the limits of its territorial sea 12 M from its baselines (section 4),<sup>58</sup> in addition to declaring a contiguous zone (section 5)<sup>59</sup> and an EEZ (section 6). The 1996 Act repealed the earlier Law No. 30/76 of 1976 pursuant to which the Maldives had similarly declared an EEZ.
29. Section 6 of the 1996 Act provides:

“The maritime area adjacent to and beyond the territorial sea as determined under section 4 of this Act together with the seabed thereof up to

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<sup>55</sup> <https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2020-SC23-RE.pdf> accessed 24 November 2021 (Annex 13), p. 68.

<sup>56</sup> Agreement between India and Maldives on Maritime Boundary in the Arabian Sea and related Matters, 28 December 1976 <<http://extwprlegs1.fao.org/docs/pdf/bj-159199.pdf>> accessed 24 November 2021 (Annex 41); Agreement between Sri Lanka, India and Maldives concerning the Determination of the Trijunction Point between the three Countries in the Gulf of Mannar, 23, 24 and 31 July 1976 <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/LKA-IND-MDV1976TP.PDF>> accessed 24 November 2021 (Annex 42).

<sup>57</sup> By way of recent example, the Maldives, Sri Lanka and India concluded a National Security Advisors Maritime Security Cooperation Agreement which came into effect on 1 March 2021. See “Inauguration of NSA Trilateral Secretariat: A step forward for maritime security cooperation with Sri Lanka, and the Maldives”, *Financial Express*, 4 March 2021 <<https://www.financialexpress.com/defence/inauguration-of-nsa-trilateral-secretariat-a-step-forward-for-maritime-security-cooperation-with-sri-lanka-and-the-maldives/2206173/>> accessed 24 November 2021 (Annex 43). In September 2021, the Maldives and India signed a Memorandum of Understanding on “Augmenting Marine Safety, Security and Environment Protection in the region through cooperation in the long-range identification and tracking of ships (LRIT) System”, which will assist both States in fulfilling its obligations as members of the International Maritime Organization. See “Maldives and India Sign MoU to Augment Marine Safety Through LRIT System Cooperation”, *Corporate Maldives*, 30 September 2021 <<https://corporatemaldives.com/maldives-and-india-sign-mou-to-augment-marine-safety-through-lrit-system-cooperation/>> accessed 24 November 2021 (Annex 44).

<sup>58</sup> Maritime Zones of Maldives Act No. 6/96 <[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MDV\\_1996\\_Act.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MDV_1996_Act.pdf)> accessed 24 November 2021 (Annex 45).

<sup>59</sup> Section 4 reads: “The maritime area contained within 12 nautical miles measured from the archipelagic baselines established in accordance with Schedule 1 to this Act shall be the territorial sea of the Maldives.”

Section 5 reads: “The maritime area contained within 12 nautical miles measured from the outer limits of the territorial sea as determined under section 4 of this Act shall be the contiguous zone of the Maldives.”

200 nautical miles measured from the archipelagic baselines as established in accordance with Schedule 1 to this Act shall be the exclusive economic zone of the Maldives.”

30. The Maldives’ archipelagic baselines and waters are established under section 3 of the 1996 Act. The archipelagic base points of the Maldives are set out in Schedule 1 of the 1996 Act, with the archipelagic straight baselines set out in Annex 3. The coordinates of those baselines have been duly established and publicised in accordance with Article 47 of UNCLOS.<sup>60</sup> Those baselines conform to the requirements of Article 47(2) of UNCLOS, subject to minor amendments currently under consideration to ensure that baselines segments are not longer than 100 M.<sup>61</sup> Mauritius raises this issue in its Memorial, but it is wholly irrelevant to the present delimitation.
31. On 26 July 2010, the Maldives presented its submission to the CLCS regarding the establishment of the outer limits of the continental shelf where it extends beyond 200 M from the archipelagic baselines of the Maldives.<sup>62</sup> That submission was made within 10 years of the entry into force of UNCLOS for the Maldives, in accordance with the applicable time limit under Article 4 of Annex II to UNCLOS. In accordance with Article 1 of Annex III to the Rules of Procedure and paragraphs 9.1.3 to 9.1.6 of the Scientific and Technical Guidelines of the CLCS (‘the CLCS Guidelines’), the Maldives’ submission to the CLCS consists of three parts comprising: (i) a short Executive Summary (35 pages);<sup>63</sup> (ii) the Main Body of the Submission (over 160 pages, with extensive appendices); and (iii) a significant amount of supporting scientific and technical data.<sup>64</sup> Three advisors and experts are listed as providing legal and technical advice and assistance.<sup>65</sup>
32. Figure 4 below depicts the OCS claimed by the Maldives in its submission to the CLCS in 2010, showing the outer limit and area of continental shelf extending beyond 200 M from the territorial sea baseline. It can be seen from that figure that the outer limit extends to (but does not overlap with) the maritime area claimed with respect to the BIOT by the United Kingdom, which administered the Chagos Archipelago in 2010 (when the Maldives made its submission).<sup>66</sup> Blenheim Reef (a feature discussed further below)<sup>67</sup> was not used as a site for base points in the construction of the BIOT maritime areas.

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<sup>60</sup> United Nations Division for Ocean Affairs and the Law of the Sea, Law of the Sea Bulletin No. 41, 1999 (**Annex 46**).

<sup>61</sup> Notably, by inserting two new base points to the north-west and east of the Maldives.

<sup>62</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 (**Annex 47**).

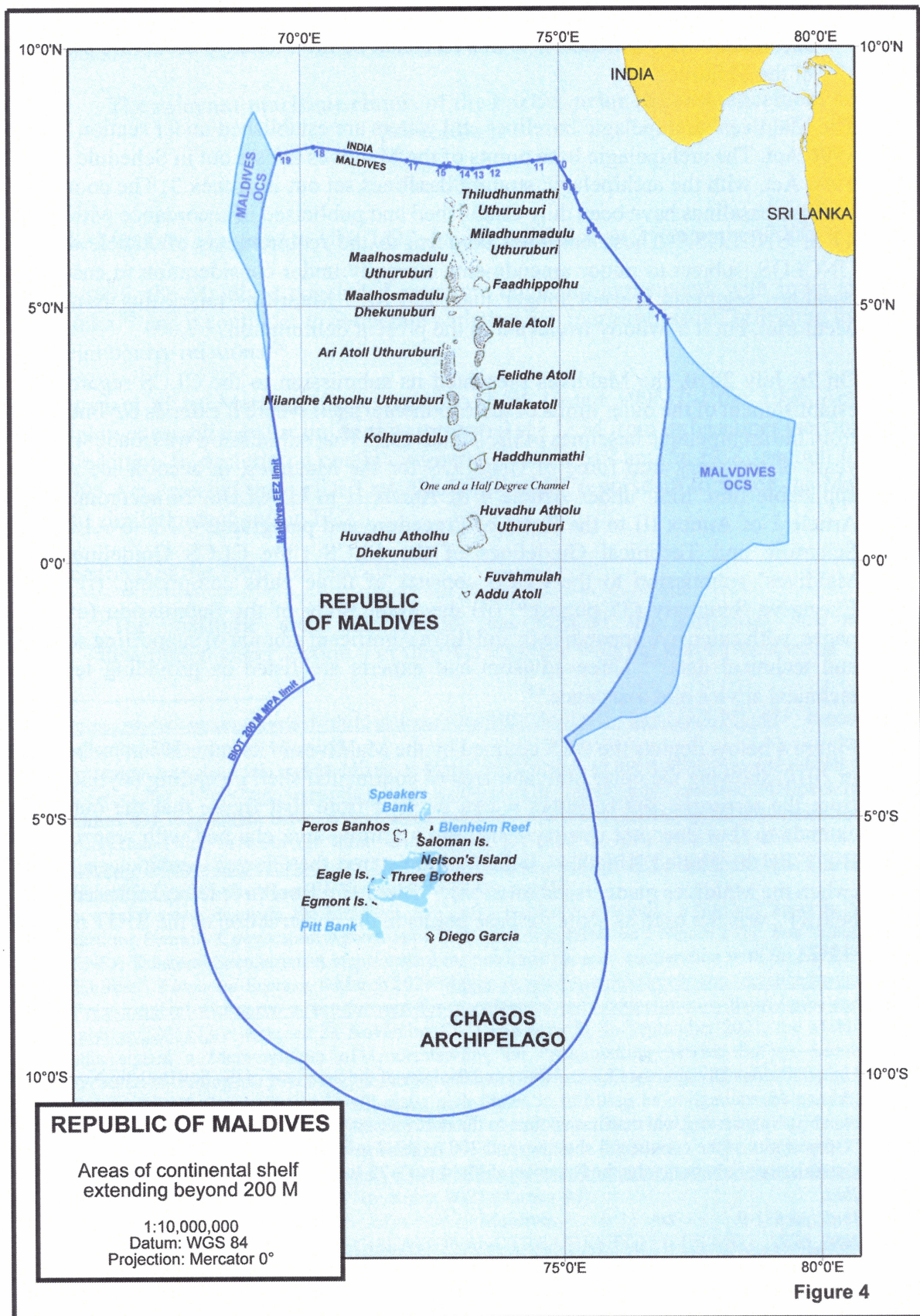
<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, para. 1-9.

<sup>65</sup> *Ibid.*, p. 5.

<sup>66</sup> The United Kingdom issued: (i) BIOT Proclamation No. 1 of 1991, establishing a 200 M BIOT Fisheries Conservation and Management Zone; (ii) BIOT Proclamation No. 1 of 2003, establishing a 200 M BIOT Environmental Protection and Conservation Zone; and (iii) BIOT Proclamation No 1 of 2010 establishing the BIOT Marine Protected Area (MPA) surrounding the Chagos Archipelago. For a summary, see *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, paras. 120–124, 152.

<sup>67</sup> See Chapter 3, paras. 104–108.





## B. Mauritius

33. Mauritius is a party to UNCLOS, having ratified it on 4 November 1994.
34. As explained in its Memorial,<sup>68</sup> Mauritius claims a 200 M EEZ (initially pursuant to the 1977 Maritime Zones Act, which was then repealed and replaced by the 2005 Maritime Zones Act 2005<sup>69</sup> ('the 2005 Act')).<sup>70</sup> Section 18(1) of the 2005 Act provides that Mauritius' continental shelf "comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory ... where the outer edge of the continental margin does not extend up to that distance, a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".
35. The Maritime Zones (Baselines and Delineating Lines) Regulations 2005 ('the Regulations'), issued pursuant to ss. 4, 5 and 27 of the 2005 Act, set out the geographical coordinates of the base points that "shall be the baselines from which the maritime zones of Mauritius shall be determined" (Regulations, s. 3).<sup>71</sup> The coordinates are listed in the First Schedule to the Regulations. They include base points for the "Chagos Archipelago", including *inter alia* Nelson's Island, Peros Banhos Atoll, Salomon Islands Atoll, and Blenheim Reef. The archipelagic baseline vertices for the Chagos Archipelago are also set out in the same Schedule. It is notable that Mauritius has excluded from its archipelagic baseline vertices Nelson's Island as well as the vast area of the Great Chagos Bank (covering 12,642 km<sup>2</sup>) — described in its Memorial as "the world's largest coral atoll structure" which "dominates the centre of the Chagos Archipelago".<sup>72</sup> Mauritius has, however, located vertices for its archipelagic baselines on Blenheim Reef, an LTE almost 11 M from the closest land territory. The archipelagic baselines are depicted in Figure 5 below, with Nelson's Island and the Chagos Bank circled in green and Blenheim Reef circled in red.<sup>73</sup> It is evident that the baselines depart to an appreciable extent from the general configuration of the archipelago contrary to Article 47(3) of UNCLOS.<sup>74</sup>

<sup>68</sup> Memorial of Mauritius, paras. 3.7–3.8.

<sup>69</sup> Maritime Zones Act (Act 2 of 2005), 1 April 2005 <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82676/90732/F1018582086/MUS82676>> accessed 24 November 2021 (**Annex 48**).

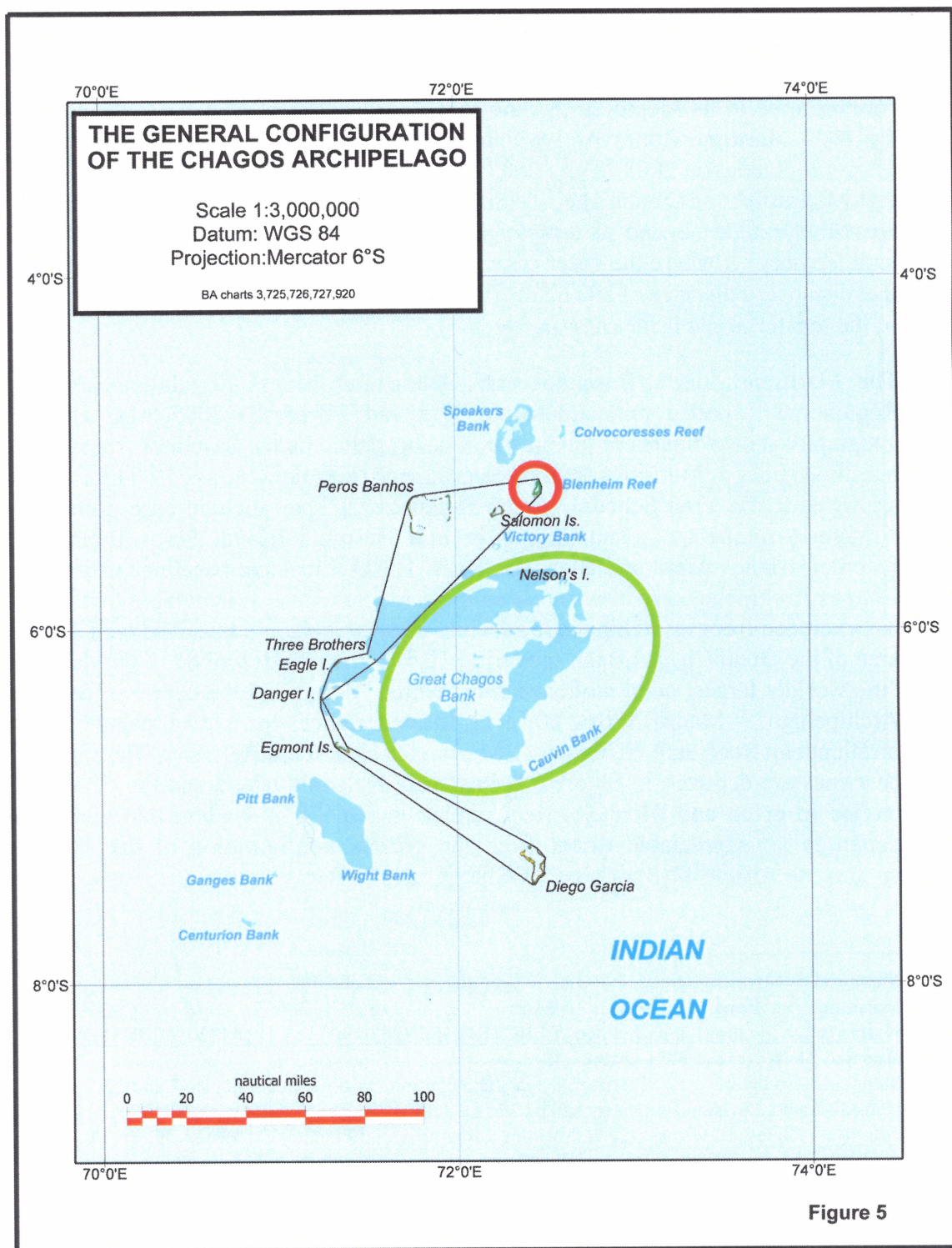
<sup>70</sup> Mauritius also claims a 12 M territorial sea and a contiguous zone. See *ibid.*, ss. 7 and 12.

<sup>71</sup> United Nations Division for Ocean Affairs and the Law of the Sea, Law of the Sea Bulletin No. 67, 2008, "Maritime Zones (Baselines and Delineating Lines) Regulations 2005" (**Annex 49**), p. 13. As noted in the Memorial, the geographical coordinates were deposited with the UN Secretary-General on 20 June 2008: Memorial of Mauritius, para. 3.9. See also Deposit by the Republic of Mauritius of charts and lists of geographical coordinates of points, pursuant to article 16, paragraph 2, and article 17, paragraph 9 of the Convention, Doc M.Z.N.63.2008.LOS, 27 June 2008 <[https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn\\_s/mzn63.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn63.pdf)> accessed 24 November 2021 (**Annex 50**).

<sup>72</sup> Memorial of Mauritius, para. 2.13.

<sup>73</sup> This is an amended version of the graphic produced by Mauritius at United Nations Division for Ocean Affairs and the Law of the Sea, Law of the Sea Bulletin No. 67, 2008, "Maritime Zones (Baselines and Delineating Lines) Regulations 2005" (**Annex 49**), p. 38.

<sup>74</sup> It is also noted that in the US statement relied upon by Mauritius at footnote 46 of its Memorial, the US made clear that it "does not recognize [Mauritius'] archipelagic baseline system" because it "includes the islands of the British Indian Ocean Territory, which are under the sovereignty of the United Kingdom": United States Department of State, Bureau of Oceans and International Environmental and



Scientific Affairs, Limits in the Seas, No. 140, Mauritius: Archipelagic and other Maritime Claims and Boundaries, 8 July 2014 <<https://www.state.gov/wp-content/uploads/2019/11/LIS-140.pdf>> accessed 24 November 2021 (Annex 51), p. 5.

36. In 2009, consistent with the extended time limits for those States parties for which UNCLOS entered into force before 13 May 1999,<sup>75</sup> Mauritius submitted to the CLCS its preliminary information concerning its claim to an OCS in respect of the Chagos Archipelago.<sup>76</sup> Mauritius' preliminary information referred only to an entitlement in the area to the south of the Chagos Archipelago, with no reference whatsoever to the area north of the Chagos Archipelago.<sup>77</sup> In March 2019, Mauritius completed its submission with respect to a claim to an OCS of approximately 175,000 km<sup>2</sup> in what it referred to as the 'Southern Chagos Archipelago Region'.<sup>78</sup> In that 2019 submission, Mauritius noted for the first time that "[t]he Republic of Mauritius also intends to make another partial submission concerning the continental shelf in the Northern Chagos Archipelago Region in due course".<sup>79</sup> As noted below, Mauritius has not provided or even indicated the status of the preparation and intended date of that submission. It has elected to provide preliminary information only *after* the commencement of these proceedings, *after* the Special Chamber's decision on jurisdiction, and just *one day before* filing its Memorial. It did so almost 12 years after the extended time limit for submitting preliminary information had expired.

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<sup>75</sup> See 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 (**Annex 52**) ("In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999"); 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 (**Annex 53**) ("It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf").

<sup>76</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 (**Annex 54**). Mauritius had previously made two partial submissions, namely: (i) a joint submission with the Republic of Seychelles concerning the region of the Mascarene Plateau, lodged on 1 December 2008; and (ii) a submission concerning the region of Rodrigues Island, lodged on 6 May 2009.

<sup>77</sup> *Ibid.*, para. 1-1 ("This document provides an indication of the outer limits of the continental shelf of the Republic of Mauritius, that lie beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured (hereinafter referred to as 'the territorial sea baselines') in respect of the Chagos Archipelago Region").

<sup>78</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, March 2019, Doc MCSS-ES-DOC (**Annex 6**), p. 9.

<sup>79</sup> *Ibid.*, para. 1-5.

#### IV. The relevant exchanges regarding the maritime boundary prior to the commencement of proceedings

##### A. Introduction

37. Given the inaccuracies in Mauritius' factual account in its Memorial, it is necessary to address the exchanges between the Parties in the years preceding the commencement of Mauritius' claim (notably with reference to the key findings of the Special Chamber in its Judgment on Preliminary Objections). The emphasis which Mauritius has placed on this misleading narrative to portray the Maldives in a negative light is regrettable given that the matters to which it pertains were the subject of that Judgment and are (with the exception of matters pertaining to the scope of the dispute<sup>80</sup>) not relevant to the current phase of proceedings.
38. As noted in the context of the Preliminary Objections proceedings, during the exchanges in question Mauritius adopted the position that it was the relevant party for maritime delimitation negotiations with the Maldives, and that position was premised on Mauritius' claim that it held sovereignty over the Chagos Archipelago.<sup>81</sup> But as expressly observed in the Judgment of the Special Chamber:
- “it is beyond doubt that there had been a long-standing sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago”.<sup>82</sup>
39. This Chamber has determined that it was only on 25 February 2019 — the date of the ICJ's Advisory Opinion — that the “legal status of the Chagos Archipelago has been clarified”.<sup>83</sup> It recognised that:
- “the Maldives may have been justified in having reservations with respect to the existence of a dispute between it and Mauritius before the ICJ rendered the advisory opinion”.<sup>84</sup>
40. Based on these *bona fide* reservations, the Maldives' consistent position prior to the date of the Judgment on Preliminary Objections was that it could not be expected to, and did not, take sides in that long-standing and hotly debated dispute,<sup>85</sup> and, accordingly, that until that sovereignty dispute was resolved, it would not and could not

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<sup>80</sup> See Chapter 2, Section I.

<sup>81</sup> See Judgment on Preliminary Objections, para. 113: “Mauritius' claims are based on the premise that it has sovereignty over the Chagos Archipelago and thus is the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention”.

<sup>82</sup> *Ibid.*, para. 242. See also paras. 133, 214 and 246 referring to the recognition of the existence of a sovereignty dispute by the Arbitral Tribunal in *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015.

<sup>83</sup> Judgment on Preliminary Objections, paras. 243–246.

<sup>84</sup> *Ibid.*, para. 334.

<sup>85</sup> In the words of the Agent before this Chamber at the Preliminary Objections phase, “The Maldives cannot be expected to take sides in that dispute. ... If there was no dispute as to who is the coastal State of the Chagos Archipelago, there would be no issue with delimitation. The Maldives would eagerly negotiate an agreement on the maritime boundary. ... [T]he Maldives has adopted a policy of refraining from bilateral talks with either party to the exclusion of the other”: ITLOS/PV.20/C28/1/Rev.1, p. 5 (lines 41–47) and p. 7 (lines 35–36) (Riffath).

proceed to finalise an agreement on delimitation with either the United Kingdom or Mauritius.<sup>86</sup>

41. It is against this backdrop that the Parties' conduct and exchanges over the years preceding the present proceedings must be fairly understood.

B. The relevant exchanges

42. In 1992, the Maldives responded in good faith to the United Kingdom's initiative to discuss the maritime boundary between the Maldives and the Chagos Archipelago. In the course of their discussions, both the Maldives and United Kingdom noted that "the application of the principle of equidistance to the delimitation of the maritime boundary would yield equitable results".<sup>87</sup> Whilst a draft technical agreement was prepared recording the coordinates of such an equidistance line (premised on base points that did not include Blenheim Reef), the agreement did not progress any further, consistent with the position of the Maldives that, until the United Kingdom's sovereignty dispute with Mauritius was resolved, it could not proceed to finalise any agreement on delimitation.

43. In 2001, when Mauritius approached the Maldives to engage in negotiations on the maritime boundary agreement,<sup>88</sup> the Maldives responded promptly, explaining in transparent terms its position as summarised at paragraph 40 above. The Maldives said:

"As jurisdiction over the Chagos Archipelago is not exercised by the Government of Mauritius, the Government of the Maldives feels that it would be inappropriate to initiate any discussions between the Government of the Maldives and the Government of Mauritius regarding the delimitation of the boundary between the Maldives and the Chagos Archipelago."<sup>89</sup>

44. That has been the Maldives' consistent position, and Mauritius' allegation of a 'change in position'<sup>90</sup> in that regard is not correct. That allegation is based on a meeting held between officials of Mauritius and the Maldives on 21 October 2010.<sup>91</sup> It is clear from the contemporaneous record of that meeting that:

- (a) The meeting was held in a spirit of fostering cordial relations and a good faith exchange of views following the Maldives' submission to the CLCS in July 2010.<sup>92</sup>

<sup>86</sup> Judgment on Preliminary Objections, para. 278 ("The Maldives is of the view that, until such dispute is settled, it 'is unable to negotiate a maritime boundary agreement with Mauritius'").

<sup>87</sup> Minutes of the Negotiations between the Representatives of the Government of the Republic of Maldives and the Government of the United Kingdom of Great Britain and Northern Ireland for the Delimitation of the Maritime Boundary between the Maldives and the Chagos Archipelago, 19 November 1992 (**Annex 55**), p. 1, para. 6.

<sup>88</sup> Letter No. 19057/3 from A.K. Gayan, Minister of Foreign Affairs and Regional Cooperation of the Republic of Mauritius, to H.E. Mr. Jathulla Jameel, Minister of Foreign Affairs of the Republic of Maldives, 19 June 2001 (**Annex 56**).

<sup>89</sup> Diplomatic Note Ref. (F1) AF-26-A/2001/03 from the Ministry of Foreign Affairs of the Republic of Maldives to the Ministry of Foreign Affairs of the Republic of Mauritius, 18 July 2001 (**Annex 57**).

<sup>90</sup> Memorial of Mauritius, para. 3.21.

<sup>91</sup> *Ibid.*, para. 3.22.

<sup>92</sup> The Maldives explained before the Special Chamber at the Preliminary Objections hearing that "These bilateral exchanges took place in furtherance of friendly bilateral relations": ITLOS/PV.20/C28/5/Rev.1,



- (b) This reflected the Maldives' general approach of seeking to engage constructively and transparently with the two States claiming sovereignty over the Chagos Archipelago.<sup>93</sup>
  - (c) Discussions regarding Mauritius' claims to the maritime area of the Chagos Archipelago were placed in the context of the United Kingdom's agreement to return the territory to Mauritius when it was no longer required for defence purposes.<sup>94</sup>
45. In addition, Mauritius was concerned only about a small overlap between the EEZ it claimed in respect of the Chagos Archipelago and the extended outer continental shelf presented in the Maldives' 2010 submission to the CLCS. As noted above, the Maldives' submission had been prepared taking into consideration the maritime area claimed by the United Kingdom with respect to BIOT, which did not locate any base points on Blenheim Reef (see Figure 4 above); the Maldives did not claim an OCS that would encroach into this maritime area. Mauritius, however, has included Blenheim Reef as the site of base points, which has resulted in its claimed EEZ extending further north than the United Kingdom/BIOT maritime claim. It is to this "potential overlap" that the record of the 2010 meeting refers<sup>95</sup> (and in respect of which Mauritius subsequently formally protested the Maldives' submission to the CLCS<sup>96</sup>). This 'overlap' is shown in Figure 6 below (indicated by the red shading).

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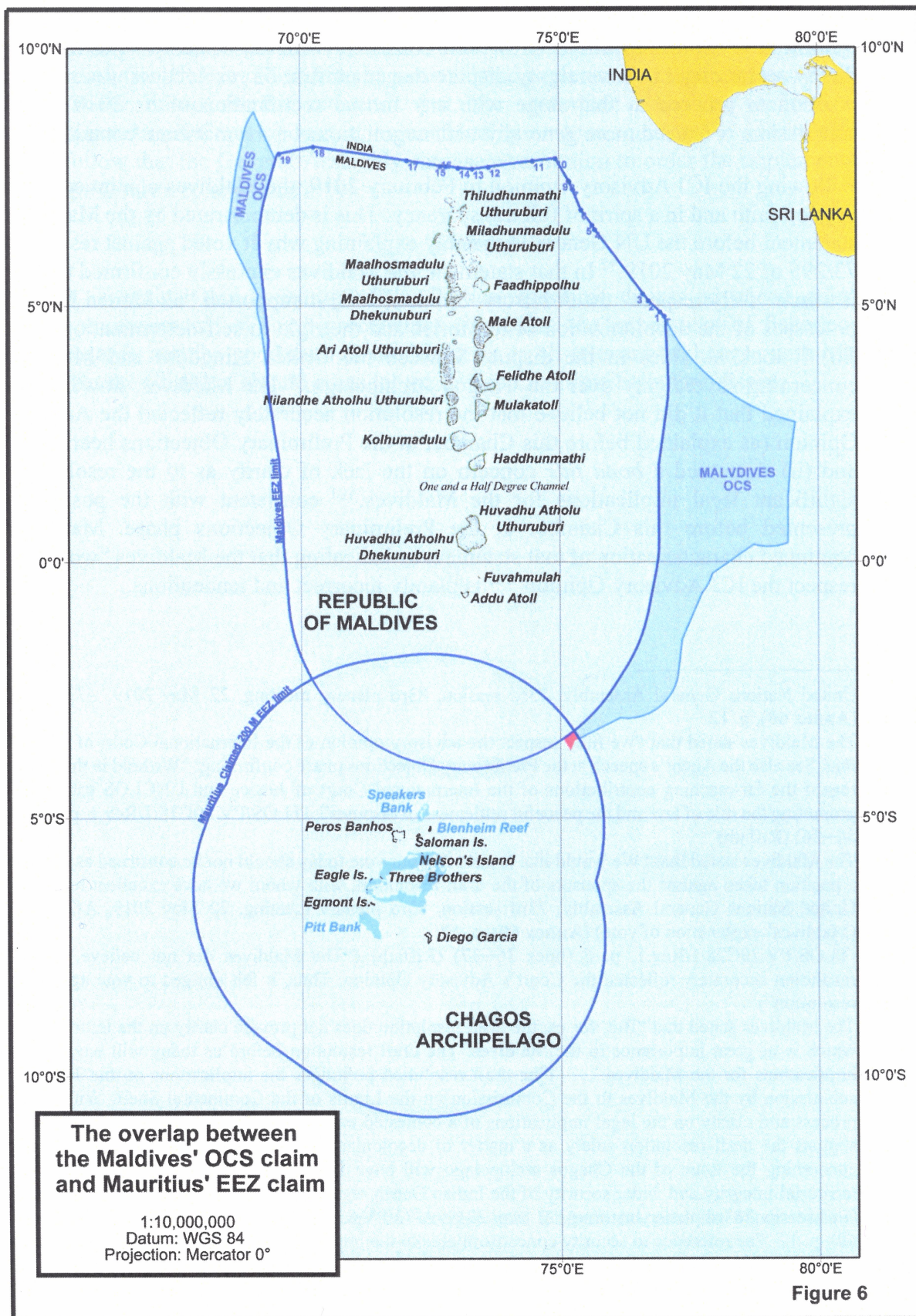
p. 25 (lines 15–16) (Akhavan). The Chamber expressed no doubt about this explanation. See also Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (**Annex 58**).

<sup>93</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 (**Annex 58**) ("Minister Shaheed stated that the Government of the Maldives was not at present holding talks with the Government of Great Britain and Ireland regarding the Chagos. He assured the Mauritius side that he would keep the Mauritius side informed of any such discussions if and when such talks take place").

<sup>94</sup> *Ibid.* (Mr Seeballuck "gave the background. ... [T]he Government of Great Britain and Northern Ireland has indeed tacitly recognized the claim of Mauritius during talks between the two Governments and that the Government of Great Britain and Northern Ireland will return the Chagos islands to the Government of the Republic of Mauritius when the same are no longer required for defense purposes by the West. Mr Seeballuck stated that it would *therefore* be quite appropriate for Mauritius and the Maldives to discuss boundary delimitation. ... Minister Shaheed stated that the Republic of the Maldives was sympathetic to the claim of Mauritius over the Chagos archipelago and took note of the UK's position that Chagos *will eventually be returned* to Mauritius") (emphasis added).

<sup>95</sup> *Ibid.* ("[T]o the north of the Chagos archipelago there is an area of potential overlap of the extended continental shelf of the Republic of the Maldives and the Republic of Mauritius").

<sup>96</sup> See 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 (**Annex 59**), referring to the Maldives' submission to the CLCS and the October 2010 meeting between the two countries, which noted that "no addendum has up to now been filed with the Secretary-General of the United Nations" by the Maldives. The diplomatic note states that Mauritius "protests formally against the submission ... in as much as the Extended Continental Shelf being claimed by ... [t]he Maldives encroaches on the Exclusive Economic Zone of ... Mauritius".



46. When this concern was first raised by Mauritius, the Maldives openly engaged with Mauritius to explore solutions. However, consistent with the Maldives' position that there was an ongoing sovereignty dispute that must first be resolved, it was not in a position to proceed at that stage with any formal rectification of its 2010 CLCS submission, or indeed more generally with negotiations on the maritime boundary.
47. Following the ICJ Advisory Opinion in February 2019, the Maldives continued to act in good faith and in a spirit of full transparency. This is demonstrated by the Maldives' statement before the UN General Assembly explaining why it voted against resolution 73/295 of 22 May 2019.<sup>97</sup> In that statement, the Maldives expressly confirmed that: (i) it *would* "fully respect" the Advisory Opinion;<sup>98</sup> (ii) it supported "all United Nations processes of the decolonization of territories and the right to self-determination;" and (iii) it took no sides in the dispute between the United Kingdom and Mauritius concerning sovereignty over the Chagos Archipelago.<sup>99</sup> The Maldives, however: (i) explained that it did not believe that the resolution accurately reflected the Advisory Opinion (as explained before this Chamber at the Preliminary Objections hearing);<sup>100</sup> and (ii) expressed a *bona fide* concern on the lack of clarity as to the resolution's significant legal implications for the Maldives,<sup>101</sup> consistent with the position it presented before this Chamber at the Preliminary Objections phase. Mauritius' continued characterisation of that statement as indicating that the Maldives "would not respect the ICJ Advisory Opinion"<sup>102</sup> is plainly incorrect and tendentious.

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<sup>97</sup> United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (**Annex 60**), p. 12.

<sup>98</sup> The Maldives stated that "we fully respect the advisory opinion of the International Court of Justice": *ibid.* See also the Agent's speech at the Preliminary Objections phase confirming: "We hold in the highest regard the far-reaching contributions of the International Court of Justice and UNCLOS tribunals in promoting the rule of law and the peaceful settlement of disputes": ITLOS/PV.20C28/1/Rev.1, p. 5 (lines 34–36) (Riffath).

<sup>99</sup> The Maldives stated that "We would like to note that our vote today should not be construed as a vote or a position taken against the sponsors of the draft resolution, with whom we have excellent relations": United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (Maldives' explanation of vote) (**Annex 60**), p. 12.

<sup>100</sup> ITLOS/PV.20C28/1/Rev.1, p. 6 (lines 36–37) (Riffath) ("The Maldives did not believe that this resolution accurately reflected the Court's Advisory Opinion. Thus, it felt obliged to vote against the resolution").

<sup>101</sup> The Maldives stated that "But, for us, the draft resolution does not provide clarity on the issue at hand, which is of great importance to the Maldives. The draft resolution before us today will have serious implications for the Maldives. ... [T]he draft resolution prejudices the implications on the July 2010 submission by the Maldives to the Commission on the Limits of the Continental Shelf. Without due process and clarity on the legal implications of a contested matter, the Maldives is not in a position to support the draft resolution solely as a matter of decolonization. For the Maldives, any uncertainty concerning the issue of the Chagos archipelago will have serious implications for the sovereignty, territorial integrity and wider security of the Indian Ocean region.": United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (Maldives' explanation of vote) (**Annex 60**), p. 12. The reference to security concerns related to the implications for the Maldives if third parties began operating in the disputed area.

<sup>102</sup> Memorial of Mauritius, para. 3.24. It is regrettable that Mauritius persists with this narrative: as the Maldives' Agent explained at the Preliminary Objections phase, "It is especially regrettable that Mauritius attempts to portray us as opposing decolonization. Such accusations are offensive and unfair. Nothing could be further from the truth. The Maldives has been a strong advocate of upholding international principles and adhering to international obligations. We have always supported decolonization and self-determination of countries in accordance with international law. We recognize



48. It is further noted that the Maldives was by no means the only State expressing such concerns with resolution 73/295. A total of 56 States abstained from voting on the resolution,<sup>103</sup> five others voted against,<sup>104</sup> and even some of those States who voted in favour raised similar concerns that, for example, “advisory opinions of the International Court of Justice are not binding on States and that it does not therefore follow that the General Assembly can use a resolution to order the implementation of the Court’s conclusions”.<sup>105</sup>

## V. Conclusion

49. It is against this backdrop of the Parties’ maritime claims advanced prior to the commencement of these proceedings (including the importance of fisheries in that regard), and the good faith of the Maldives in all relevant exchanges with Mauritius, that the Chamber should consider the present maritime boundary dispute.

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the right to self-determination as an integral and fundamental element of international law”: ITLOS/PV.20C28/1/Rev.1, p. 6 (lines 1–8) (Riffath).

<sup>103</sup> United Nations, Meetings Coverage of the United Nations General Assembly Plenary, 73rd session, 83rd and 94th meetings, “General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius’ Complete Decolonization”, 22 May 2019 <<https://www.un.org/press/en/2019/ga12146.doc.htm>> accessed 24 November 2021 (**Annex 61**).

<sup>104</sup> *Ibid.*, listing Australia, Hungary, Israel, United Kingdom and the United States.

<sup>105</sup> United Nations General Assembly, 73rd session, 84th plenary meeting, 22 May 2019, A/73/PV.84 (**Annex 62**), p. 4 (Chile). See also p. 1 (Sweden) and p. 7 (Turkey).

## CHAPTER 2: THE SCOPE OF THE DISPUTE OVER WHICH THE SPECIAL CHAMBER HAS JURISDICTION AND WHICH IS ADMISSIBLE

50. This Chapter addresses the scope of the dispute which the Special Chamber has jurisdiction to resolve and which is admissible. Specifically, this Chapter:
- (a) Identifies the scope of the dispute defined by the Special Chamber in the Judgment on Preliminary Objections in determining the extent of its jurisdiction (**Section I**);
  - (b) Explains that Mauritius' new claim to an OCS entitlement is neither within the Special Chamber's jurisdiction nor admissible (**Section II**).

### I. The scope of the dispute identified by the Special Chamber in the Judgment on Preliminary Objections

51. During the Preliminary Objections phase, Mauritius identified the area of overlapping claims as 95,828 km<sup>2</sup>, based on the legislation summarised in Chapter 1, Section III above.<sup>106</sup> This represented the area of overlap of the Parties' EEZs and their continental shelves within 200 M.<sup>107</sup> Following the Judgment on Preliminary Objections,<sup>108</sup> it is now established that the Tribunal has jurisdiction to delimit the boundary in respect of the Parties' claimed EEZs and continental shelves within 200 M (as is common ground<sup>109</sup>).
52. The Special Chamber further identified, as part of the relevant dispute, that portion of the Maldives' claimed OCS (the subject of its submission to the CLCS in 2010) that overlaps to a small extent with Mauritius' EEZ. As explained in Chapter 1, at the time the Maldives made its submission to the CLCS in 2010, its claim of entitlement to a continental shelf beyond 200 M did not overlap with the United Kingdom's claim to a maritime area with respect to BIOT.<sup>110</sup> However, in contrast to the United Kingdom, Mauritius seeks to place on Blenheim Reef base points for measuring the breadth of its EEZ and continental shelf within 200 M. As a consequence, there is a small area of overlap between the Maldives' OCS claim, and Mauritius' claim to an EEZ and continental shelf within 200 M (see Figure 6 of Chapter 1 above). In its Judgment, the Special Chamber decided, after careful consideration of the facts, and in particular on the basis of the "formal protest of Mauritius ... to the submission by the Maldives to the CLCS", that at the time Mauritius initiated proceedings, a dispute existed regarding the:

<sup>106</sup> See Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, Figure 4. The Special Chamber confirmed that "it is clear from the national legislation adopted by the Parties that their respective claims to an exclusive economic zone in the relevant area overlap": Judgment on Preliminary Objections, para. 327.

<sup>107</sup> In its Memorial, Mauritius now states that this overlapping area is 95,600 km<sup>2</sup>: Memorial of Mauritius, para. 4.44 and Figure 4.7 entitled "Area of overlapping 200 M entitlements". The Maldives understands that the change in the alleged area of overlap is due to the fact that, during the Preliminary Objections phase, Mauritius used incorrect coordinates for the northern part of Blenheim Reef.

<sup>108</sup> See in particular Judgment on Preliminary Objections, para. 327.

<sup>109</sup> See Memorial of Mauritius, Chapter 4, section II.

<sup>110</sup> See Chapter 1, paras. 32, 45 above.

“overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area”.<sup>111</sup>

## II. Mauritius’ claim to an OCS entitlement is neither within the Special Chamber’s jurisdiction nor admissible

53. What was not and could not be anticipated at the time of the Judgment on Preliminary Objections was that, just one day before filing its Memorial, on 24 May 2021, Mauritius would elect to file its “Amended Preliminary Information ... Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region”, seeking to extend the overlapping claims it had earlier identified by some 22,000 km<sup>2</sup> which it now claims for the first time as its OCS.<sup>112</sup> Comprising just 28 pages, the document does not list any technical or scientific experts as contributing to its analysis. The only advisers listed are two of Mauritius’ legal counsel in the present proceedings.<sup>113</sup> Furthermore, as noted above, there is no indication of when a full submission will be provided.
54. On 15 July 2021, the Maldives sent a Note Verbale to the CLCS referring to Mauritius’ filing of the Preliminary Information and, with reference to the present proceedings, notifying the CLCS that the Maldives “reserves its right to fully respond to the 2021 Preliminary Information in due course”.<sup>114</sup>
55. In the present section, the Maldives addresses why the Special Chamber cannot entertain Mauritius’ new OCS claim. It addresses the following matters:
- (a) The Chamber has no jurisdiction (**subsection A**). In June 2019, when Mauritius filed its application in the present proceedings, no dispute existed as regards Mauritius’ alleged entitlement to an OCS in the ‘Northern Chagos Archipelago Region’. In finding that a dispute existed between the Parties at the relevant time, the Judgment on Preliminary Objections made no reference whatsoever to overlapping claims in the OCS. Mauritius first advanced its OCS claim against the Maldives in its Memorial on 25 May 2021, and obviously the Maldives had no opportunity to convey its views on that claim pursuant to UNCLOS Article 283.
  - (b) Even if the Chamber were to find that it had jurisdiction, Mauritius’ claim in respect of its alleged OCS entitlement is clearly inadmissible (**subsection B**) because:
    - (i) Mauritius has submitted only preliminary information with the CLCS, and has not filed a full submission (contrary to its obligations pursuant to UNCLOS, Article 76(8) and Article 4 of Annex II). Further, Mauritius submitted its preliminary information to the CLCS on the ‘Northern

<sup>111</sup> Judgment on Preliminary Objections, para. 332.

<sup>112</sup> See Memorial of Mauritius, Figure 4.1.

<sup>113</sup> See 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 (**Annex 5**), p. 2, identifying Mr P. Reichler and Professor P. Sands QC.

<sup>114</sup> 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 (**Annex 63**).

Chagos Archipelago Region’ 12 years after the expiration of the extended time limit for doing so, which was in 2009. It is therefore not entitled to file a full submission (**subsection B(1)**).

- (ii) The alleged entitlement on the part of Mauritius to an OCS in the area to the north of the Chagos Archipelago is manifestly unfounded under UNCLOS Article 76 (**subsection B(2)**). Contrary to Mauritius’ assertion, the Maldives has never agreed that Mauritius has an entitlement in the OCS appurtenant to the Maldives and no such agreement can be implied from the fact that the Maldives has filed its own submission with the CLCS. In fact, the single Foot of the Slope (‘FOS’) point upon which Mauritius’ entire claim relies is a natural prolongation solely of the submerged land territory of *the Maldives* that is clearly not appurtenant to the Chagos Archipelago. As such, Mauritius’ claim to an entitlement has no legal basis whatsoever.
- (iii) Mauritius’ arbitrary claim that the new area of overlap with respect to its alleged OCS entitlement should be delimited by dividing it in half is predicated on a prior delineation of the outer limits of the alleged continental shelf, a task which is beyond the Chamber’s jurisdiction (**subsection B(3)**).

A. There was no dispute concerning Mauritius’ alleged entitlement to an OCS in the ‘Northern Chagos Archipelago Region’ at the time it filed its application

- 56. In its Notification of Claim dated 18 June 2019, Mauritius requested a delimitation of “the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines from which its territorial sea is measured”.<sup>115</sup> However, Mauritius provided no legal or factual basis for such a delimitation, given that, at this time, it had never made a claim to such an entitlement.
- 57. Reflecting this fact, in its Judgment on Preliminary Objections, the Special Chamber expressly reserved its position as to “questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under Article 76 of the Convention”.<sup>116</sup> As set out in Section I above, the only dispute recognised by the Chamber was the overlap between: (i) on the part of the Maldives, its claims to an EEZ, continental shelf within 200 M, and OCS; and (ii) on the part of Mauritius, its EEZ and continental shelf within 200 M. The Chamber did not find anywhere that a dispute existed in respect of overlapping OCS claims, the reason being that such a dispute did not in fact exist. As a result, this Chamber does not have jurisdiction in respect of Mauritius’ purported OCS entitlement.
- 58. The existence of a “dispute” at the time of the commencement of proceedings is a precondition to the exercise of jurisdiction by this Chamber. This is clear from the text of Article 288(1) of UNCLOS which confers “jurisdiction over any *dispute* concerning

<sup>115</sup> Notification and Statement of Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019 (**Annex 64**), para. 27.

<sup>116</sup> Judgment on Preliminary Objections, para. 354(6).

the interpretation or application of this Convention” (emphasis added). In its Judgment, this Chamber recalled that:

“for it to have jurisdiction *ratione materiae* to entertain a case, ‘a dispute concerning the interpretation or application of the Convention between the Parties must have existed at the time of the filing of the Application’ (*M/V ‘Norstar’ (Panama v. Italy)*, *Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 65, para. 84; see also *M/V ‘Louisa’ (Saint Vincent and the Grenadines v. Kingdom of Spain)*, *Judgment, ITLOS Reports 2013*, p. 4, at p. 46, para. 151)”.<sup>117</sup>

59. As the Special Chamber confirmed, the existence of a dispute at the time of filing is not a mere technical matter. It is settled jurisprudence that a State must not be “deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct”.<sup>118</sup> The dispute must be of “sufficient clarity that the Parties were aware of the issues in respect of which they disagreed”<sup>119</sup> and it must be shown that the respondent State “was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant”.<sup>120</sup>
60. The Special Chamber also made clear that, as regards OCS entitlement, the dispute that existed at the time of the institution of proceedings was limited to the overlap between the Maldives’ OCS and Mauritius’ EEZ. It stated:

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

<sup>117</sup> Judgment on Preliminary Objections, para. 322. See also *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 148 (“The concept of a dispute is well-established in international law and the inclusion of the term within Article 288 constitutes a threshold requirement for the exercise of the Tribunal’s jurisdiction. Simply put, the Tribunal is not empowered to act except in respect of one or more actual disputes between the Parties”); *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, para. 41 (“The evidence must show that the parties ‘hold clearly opposite views’ with respect to the issue brought before the Court”); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at pp. 84–85, para. 30 (“The dispute must in principle exist at the time the Application is submitted to the Court”).

<sup>118</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at p. 851, para. 43.

<sup>119</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at pp. 84–85, para. 30.

<sup>120</sup> *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at pp. 850–851, para. 41.



CLCS, the Parties clearly hold opposite views and the claim of the Maldives is positively opposed by Mauritius.”<sup>121</sup>

61. This finding was consistent with Mauritius’ own submissions on the scope of the dispute. The Special Chamber noted Mauritius’ submission that “graphic representations illustrate the extent of the Parties’ claims”. These depicted (to use the Special Chamber’s words) “the extent of the Parties’ claims” and did not include any claim by Mauritius to an OCS entitlement.<sup>122</sup>
62. This is consistent with the documents relied on by Mauritius in support of the existence of a dispute at the date on which it instituted proceedings, which refer only to the overlap between Maldives’ claims and Mauritius’ EEZ.<sup>123</sup> Specifically:
- (a) On 21 September 2010, Mauritius sent a Diplomatic Note to Maldives pressing for “EEZ delimitation boundary talks”.<sup>124</sup> Mauritius expressly referred to the Maldives’ recent submission to the CLCS setting out the Maldives’ OCS claim (dated July 2010), but made no reference to any delimitation of an overlapping OCS claim or to Mauritius’ (now) purported OCS entitlement at all.
  - (b) In the meeting that occurred on 21 October 2010, the minutes record that “a Preliminary Information Note has been lodged with the CLCS in respect of the Extended Continental Shelf of Mauritius in the Chagos region”.<sup>125</sup> As noted below, that Preliminary Information made no reference whatsoever to the area to the north of the Chagos Archipelago. Rather, the concern expressed by Mauritius at this time was that “in the [Maldives’] submission to the CLCS the exclusive economic zone (EEZ) coordinates of the Republic of Mauritius in the Chagos region were not taken into consideration”<sup>126</sup> — reflecting the limited dispute identified by this Chamber in its Judgment on Preliminary Objections.<sup>127</sup>

<sup>121</sup> Judgment on Preliminary Objections, para. 332. See also the Separate and Dissenting Opinion of Judge Oxman, paras. 20, 24.

<sup>122</sup> See *Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, Figures 3 and 4.

<sup>123</sup> Judgment on Preliminary Objections, paras. 315, 317.

<sup>124</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 (**Annex 65**) (emphasis added).

<sup>125</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 (**Annex 58**).

<sup>126</sup> *Ibid.* (“[T]he Mauritius side also noted that to the north of the Chagos archipelago there is an area of potential overlap of the extended continental shelf of the Republic of Maldives and the Republic of Mauritius and suggested that the two States can make a Joint submission with regard to that area”). Further, Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (**Annex 66**) states that the Parties “agreed to make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago”. Such a vague, high-level reference to a potential claim is clearly not sufficient to crystallise a dispute. See e.g., *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382.

<sup>127</sup> See Chapter 2, para. 52 above.

- (c) In 2011, Mauritius' formal objection to the Maldives' CLCS submission did not envisage any dispute concerning overlapping OCS entitlements. In that instance, Mauritius objected only "in as much as the Extended Continental Shelf being claimed by the Republic of Maldives encroaches on the Exclusive Economic Zone of the Republic of Mauritius, the coordinates of which were communicated to the Secretary-General in a Note dated 20 June 2008".<sup>128</sup> Just like the protest of 2011, the referenced 2008 communication did not make any reference to an OCS claim by Mauritius; it was limited to setting out the geographical coordinates of Mauritius' claimed baselines.<sup>129</sup>
63. In 2009, when Mauritius submitted its Preliminary Information to the CLCS claiming an OCS entitlement "in respect of the Chagos Archipelago Region",<sup>130</sup> it did so only with respect to the area to the south of the Chagos Archipelago — an area of no relevance to the present delimitation — and without making any reference whatsoever to the area to the north of the Chagos Archipelago. It indicated that it expected to file a full submission in respect of its OCS in the Chagos Archipelago Region by 2012.<sup>131</sup> In fact, it was only on 26 March 2019 that Mauritius filed its Submission to the CLCS on the Chagos Archipelago Region. That Submission merely contained a sentence referring to a *potential* claim with respect to the 'Northern Chagos Archipelago Region', framed in vague terms and with no timeframe given for when such a hypothetical claim of unspecified scope may be raised.<sup>132</sup> Mauritius' claim to an OCS entitlement in the 'Northern Chagos Archipelago Region' was raised only on 24 May 2021, some two years after the present proceedings were commenced. Even now, Mauritius has not actually filed a submission with the CLCS, providing no information as to when it might do so beyond a vague suggestion that it "intends" to do so "in due course".<sup>133</sup>
64. In these circumstances, the Maldives was obviously not aware, and could not have been aware, that its claim to an OCS outside of Mauritius' EEZ was affirmatively opposed by Mauritius, until 25 May 2021 when it received Mauritius' Memorial (the Preliminary Information dated the previous day had been filed with the CLCS but not transmitted to the Maldives). The Maldives was clearly 'deprived of an opportunity to

<sup>128</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 (**Annex 59**).

<sup>129</sup> Deposit by the Republic of Mauritius of charts and lists of geographical coordinates of points, pursuant to article 16, paragraph 2, and article 17, paragraph 9 of the Convention, Doc M.Z.N.63.2008.LOS, 27 June 2008  
<[https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn\\_s/mzn63.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn63.pdf)> accessed 24 November 2021 (**Annex 50**).

<sup>130</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 (**Annex 54**), para. 1-1.

<sup>131</sup> *Ibid.*, para. 2-2.

<sup>132</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 (**Annex 6**), para. 1-5 ("the Republic of Mauritius also intends to make another partial submission concerning the continental shelf in the Northern Chagos Archipelago Region in due course").

<sup>133</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 (**Annex 5**), para. 2-4.

react'<sup>134</sup> to Mauritius' claim (including through an exchange of views as required by Article 283 of UNCLOS as addressed below). To date, the Maldives' response has been limited to issuing a note verbale to the CLCS indicating that it does not consider it appropriate to respond at this stage to Mauritius' preliminary information concerning its alleged OCS entitlement in the 'Northern Chagos Archipelago Region', given the pendency of the present proceedings, but reserving its right to do so in due course.<sup>135</sup> Mauritius' appeal to some purported 'efficiency'<sup>136</sup> in the Chamber's consideration of its new claim cannot circumvent the fundamental requirement of the existence of a dispute at the time proceedings were commenced.

65. In addition to and as a necessary consequence of the absence of a dispute at the critical date as regards Mauritius' new OCS claim, there has been no opportunity for the Parties to exchange views as required under Article 283 of UNCLOS with respect to that claim.<sup>137</sup> Until 25 May 2021, the Maldives did not even have an opportunity to *consider* Mauritius' alleged OCS entitlement. As this Chamber will be aware, the requirement regarding exchanges of views under Article 283 has a "distinct purpose"<sup>138</sup> and "is not an empty formality, to be dispensed with at the whims of a disputant"; instead, "[t]he obligation in this regard must be discharged in good faith, and it is the duty of the Tribunal to examine whether this is being done".<sup>139</sup> There is no doubt in the present case that this obligation has not been respected. This is an additional reason why the Special Chamber does not have jurisdiction over Mauritius' new claim to an alleged OCS.

#### B. Mauritius' claim in respect of its alleged OCS entitlement is inadmissible

66. The express reservation in the Judgment on Preliminary Objections as to "questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under Article 76 of the Convention"<sup>140</sup> applies clearly not only to jurisdiction but also to admissibility in the present phase of proceedings. Whilst the absence of a CLCS recommendation as to the outer limits of a party's OCS

<sup>134</sup> Cf. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at p. 851, para. 43.

<sup>135</sup> 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 (**Annex 63**). See also para. 54 above.

<sup>136</sup> Mauritius concludes its request for ascertainment and delimitation of the OCS by noting that "[t]he exercise of that function would contribute to the *efficient and sound administration of justice*, allowing the Special Chamber to assist the Parties in fully resolving their differences, both within and beyond 200 M": Memorial of Mauritius, para. 4.66 (emphasis added).

<sup>137</sup> Article 283 of UNCLOS provides: "When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means".

<sup>138</sup> *M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, Dissenting Opinion of Judge Wolfrum, para. 27 ("These negotiations have a distinct purpose clearly expressed in in this provision namely to solve the dispute without recourse to the mechanisms set out in Section 2 of Part XV of the Convention").

<sup>139</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. See also the careful consideration of whether the requirements of Article 283 UNCLOS had been fulfilled at paras. 37–51 of the Order of 8 October 2003 in the same case.

<sup>140</sup> Judgment on Preliminary Objections, para. 354(6).

entitlement does not *necessarily* bar an international tribunal from carrying out a delimitation with respect to that entitlement,<sup>141</sup> it is clear in the present case that Mauritius' claim with respect to an alleged OCS entitlement in the 'Northern Chagos Archipelago Region' is inadmissible for the reasons summarised at paragraph 55(b) above and elaborated below.

67. By way of preliminary observation, Mauritius has clearly recognised the serious deficiencies in its new claim. It makes the remarkable proposal that the Chamber could "satisfy itself" that "a single extended shelf exists in the entirety of the area beyond 200 M claimed by both states" by marshalling for itself "reliable scientific and technical evidence – which could be supplied by the Parties or, in the Chamber's discretion, by an independent expert or experts of its choosing"<sup>142</sup> (at the shared expense of the Parties, or at the expense of the general budget of the States Parties to the Convention<sup>143</sup>). This unprecedented<sup>144</sup> proposal is clearly inappropriate. Mauritius is attempting to shift its burden of proof onto the Maldives and/or the Special Chamber.<sup>145</sup>
68. In any event, expert evidence would not assist Mauritius because its claim to an OCS entitlement overlapping with that of the Maldives is inadmissible because: (i) it has not filed a full CLCS submission; (ii) there is no FOS point which is appurtenant to Mauritius' land territory; and (iii) the delimitation which it seeks is predicated on the outcome of a delineation following a CLCS recommendation which has not yet occurred.

*1. Mauritius has not made a full submission to the CLCS*

69. The jurisprudence of international courts and tribunals has established that a delimitation with respect to an alleged OCS entitlement cannot proceed in circumstances where the State concerned has failed to file a full submission to the CLCS in accordance with the relevant provisions of UNCLOS. It is not sufficient for a State to have filed preliminary information.
70. Article 76(8) of UNCLOS provides (emphasis added):

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<sup>141</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 410; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 137, paras. 112–113.

<sup>142</sup> Memorial of Mauritius, para. 4.66.

<sup>143</sup> *Ibid.*, para. 4.63.

<sup>144</sup> It is telling that, in no other case in which a State has failed to satisfy the conditions for an admissible CLCS claim, has an international court or tribunal considered it appropriate to commission its own expert evidence, or direct the parties to provide expert evidence, on matters that are properly the subject of a CLCS submission.

<sup>145</sup> As observed by the ICJ, "[i]t is a general principle of law, confirmed by the jurisprudence of this Court, that a party which advances a point of fact in support of its claim must establish that fact": *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, ICJ Reports 2008, p. 12 at p. 31, para. 45. See further the approach of the ICJ with respect to Nicaragua's failure to establish its claim to an OCS in *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 131, para. 82.

“Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured *shall* be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation ...”<sup>146</sup>

71. Article 4 of Annex II of UNCLOS states (emphasis added):

“Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it *shall* submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.”

72. In application of these provisions, the ICJ stated in its 2016 judgment in *Nicaragua v. Colombia* that, in order to procure a delimitation in respect of an alleged OCS entitlement, a party to UNCLOS must have:

“submit[t] information on the limits of the continental shelf it claims beyond 200 nautical miles, in accordance with Article 76, paragraph 8, of UNCLOS, to the CLCS”.<sup>147</sup>

73. The ICJ had previously held in its 2012 judgment between the same parties held that Nicaragua’s submission of mere preliminary information to the CLCS fell “short of meeting the requirements for information on the limits of the continental shelf beyond 200 nautical miles which ‘shall be submitted by the coastal State to the Commission’ in accordance with paragraph 8 of Article 76 of UNCLOS”.<sup>148</sup> Accordingly, it refused to consider Nicaragua’s claim with respect to an alleged OCS entitlement, noting that Nicaragua had “not established that it has a continental margin that extends far enough

<sup>146</sup> The paragraph proceeds to state: “The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.”

<sup>147</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 131, para. 82. Similarly, in *Somalia v. Kenya*, the Court recalled that “as expounded in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, ‘any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder’ (*Judgment, I.C.J. Reports 2007 (II)*, p. 759, para. 319)”, and the Court expressly noted that in the case before it “both States have made submissions ... to the Commission in accordance with Article 76, paragraph 8, of the Convention”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 187–188.

<sup>148</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at pp. 668–669, paras. 125–130. Cf. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 136, para. 107.

to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast".<sup>149</sup>

74. By contrast, in its 2016 judgment between these parties, the ICJ was in a position to consider Nicaragua's claim to an OCS because, before initiating new proceedings against Colombia in September 2013, Nicaragua had provided the relevant "final information" consistent with its obligations under UNCLOS.<sup>150</sup> The ICJ confirmed that the filing by Nicaragua of its full submission with the CLCS was a "condition" of and a "prerequisite" to it exercising jurisdiction to carry out a delimitation with respect to an alleged OCS entitlement.<sup>151</sup>
75. It is undisputed that Mauritius has not filed a full submission concerning its OCS claim in the 'Northern Chagos Archipelago Region'. In those circumstances, the Special Chamber is not able to carry out a delimitation with respect to Mauritius' alleged OCS entitlement.
76. It is noted further that Mauritius has failed to comply with the mandatory time limits for OCS claims, meaning both that its Preliminary Information was filed contrary to its obligations under UNCLOS *and* that it is no longer entitled to make a full submission to the CLCS. Specifically:
- (a) Article 4 of Annex II to UNCLOS requires that, where a State intends to establish the limits of its entitlement to an OCS, "it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State".
  - (b) In 2001, the States Parties to the Convention agreed in SPLOS/72 that, for States Parties for which UNCLOS entered into force before 13 May 1999 (i.e. including Mauritius), an extended deadline of 13 May 2009 would apply.<sup>152</sup> In 2008, it was separately agreed in SPLOS/183 that a State would be taken as having complied with the relevant time limit if it had submitted, before the expiry of that time period, (i) "preliminary information indicative of the outer

<sup>149</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 669, para. 129. See analysis at *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 131, para. 82.

<sup>150</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 132, paras. 86–87.

<sup>151</sup> *Ibid.*, p. 132, para. 87 and p. 136, para. 105.

<sup>152</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 (**Annex 52**) ("In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999").



limits of the continental shelf beyond 200 nautical miles” and (ii) “a description of the status of preparation and intended date of making a submission”.<sup>153</sup>

77. As noted above: (i) Mauritius’ 2009 Preliminary Information on the Chagos Archipelago Region addressed only the area to the south of the Chagos Archipelago, with no reference whatsoever to the area to the north; and (ii) Mauritius filed its “Amended Preliminary Information” in respect of the ‘Northern Chagos Archipelago Region’ on 24 May 2021, some 12 years after the time limit for filing preliminary information concerning an alleged OCS entitlement had expired; (iii) there is no indication of the intended date of the full submission; and (iv) contrary to its title, Mauritius’ 24 May 2021 communication does not ‘amend’ its 2009 Preliminary Information but raises an entirely new OCS claim.<sup>154</sup>
  78. Accordingly, Mauritius’ failure to file a submission with the CLCS to date and prior to the lapse of mandatory time limits is inconsistent with its obligations under UNCLOS Article 76, and precludes the Special Chamber from proceeding with a delimitation in respect of its alleged OCS entitlement.
2. *Mauritius’ alleged entitlement to an OCS in the ‘Northern Chagos Archipelago Region’ is manifestly unfounded*
79. Before exercising jurisdiction in respect of a State’s alleged entitlement to an OCS, an international tribunal must be satisfied that the alleged entitlement *exists*, even if its outer limits have yet to be determined following a CLCS recommendation.<sup>155</sup> Even if Mauritius’ factual assertions on the morphology of the Chagos Laccadive Ridge (‘CLR’) were to be accepted, it is manifest that it has no entitlement because the single FOS point on which Mauritius bases its entire claim (FOS-VIT31B<sup>156</sup>) is obviously not

<sup>153</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 (**Annex 53**) (“It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf”).

<sup>154</sup> It is further noted that there is not any clear legal basis for the ‘amendment’ of Preliminary Information in the rules and practice adopted by the CLCS or the States parties to UNCLOS.

<sup>155</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 669, para. 129. In *Somalia v. Kenya* the Court confirmed that “[a]n essential step in any delimitation is to determine whether there are entitlements, and whether they overlap”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 193. See also *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, para. 491; *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 397, 399, 446.

<sup>156</sup> Mauritius asserts its entitlement by delineating a line 60 M from that single FOS point: 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 (**Annex 5**), para. 8-4; Memorial of Mauritius, paras. 2.41–2.42.

the natural prolongation of *its* submerged land territory across *its* seabed through the shelf, slope and rise as required by UNCLOS Article 76.

80. The Maldives does not dispute, as a matter of principle, that where parties to a dispute have both made CLCS submissions, agreement between them as to the existence of their respective OCS entitlements can be a basis for an international court or tribunal to exercise jurisdiction.<sup>157</sup> In the present case however, contrary to Mauritius' assertion,<sup>158</sup> the Maldives does *not* agree that Mauritius is entitled to an OCS that overlaps with its own. Mauritius' contention that, like the Maldives (which has a valid OCS entitlement), the Chagos Archipelago is the surface expression of the CLR, does not mean that it is similarly entitled to an OCS.<sup>159</sup>
81. Mauritius seeks to gain assistance from the fact that "neither State claims that there is a 'break' in the shelf appurtenant to the other".<sup>160</sup> Of course the Maldives did not refer to any "break" in relation to the continental shelf surrounding the Chagos Archipelago in its 2010 CLCS Submission because it was irrelevant to its own claim. Absent a claim by Mauritius until 2021, the question of the seafloor between itself and the Chagos Archipelago, or in the vicinity of the Chagos Archipelago more generally, did not arise. However, in light of Mauritius' novel claim in these proceedings, the Maldives now explains why Mauritius' new claim of appurtenance is manifestly unfounded in light of the relevant legal requirements, with reference to *inter alia* the undisputed fact that the Chagos Trough represents a 'break' in the submerged prolongation of Mauritius' land territory.
82. UNCLOS Article 76 provides that a coastal State must establish a submerged natural prolongation from *its* land territory across *its* seabed through the shelf, slope and rise to the outer edge of its continental margin.<sup>161</sup> It cannot validly claim an OCS entitlement based on the natural prolongation of *another State's* undisputed submerged land territory. Yet this is precisely what Mauritius seeks to do. Notably, the sole FOS

<sup>157</sup> See *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 440. See also *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 ("The Court further notes that neither Party questions the existence of the other Party's entitlement to a continental shelf beyond 200 nautical miles or the extent of that claim").

<sup>158</sup> Memorial of Mauritius, paras. 4.61, 4.64, 4.66.

<sup>159</sup> Mauritius argues that as a matter of necessary implication that a State also located on the CLR must be entitled to an OCS in precisely the same area on which the Maldives is also located, that they have "both claimed entitlements to the same general area of continental shelf located more than 200 M from their respective coasts", and that "the elevations and banks in the Chagos Archipelago represent the submerged prolongation of the relevant land territory". See 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 (**Annex 5**), paras. 6.1–6.4; Memorial of Mauritius, paras. 2.32, 2.40, 2.47, 4.48, 4.64.

<sup>160</sup> Memorial of Mauritius, para. 4.66.

<sup>161</sup> These legal requirements are reinforced by the CLCS Guidelines which state, at para. 2.2.3, as regards the "Test of appurtenance", that "If a State is able to demonstrate to the Commission that the natural prolongation of *its submerged land territory* to the outer edge of its continental margin extends beyond the 200-nautical-mile distance criterion, the outer limit of its continental shelf can be delineated by means of the application of the complex set of rules described in paragraphs 4 to 10 [of Article 76]" (emphasis added).

point on which Mauritius bases its claim to an OCS (FOS-VIT31B<sup>162</sup>) is not part of the natural prolongation of *its* submerged land territory across *its* seabed through the shelf, slope and rise. Rather, FOS-VIT31B can only be characterised as the natural prolongation of *the Maldives'* submerged land territory across *the Maldives'* seabed.<sup>163</sup>

83. The CLR is a major elongated tectonic feature comprising three different segments (the Laccadive Plateau,<sup>164</sup> the Maldives Ridge<sup>165</sup> and the Chagos Bank<sup>166</sup>), which are variously adjacent to three seafloor features (the Laccadive Basin,<sup>167</sup> the Comorin Ridge<sup>168</sup> and the Chagos Trough). Mauritius clearly accepts that the Chagos Trough is “a linear depression ... which runs alongside the CLR” at a depth of over 5,000 m and that the CLR only “merges with the flat-lying deep ocean floor at a depth of around 5,000 metres”<sup>169</sup> immediately to its east.<sup>170</sup> It is therefore common ground between the Parties that it is not possible to establish natural prolongation across the Chagos Trough which passes through the entire EEZ of Mauritius and the southern portion of the Maldives’ EEZ. It is also not in dispute that the Chagos Trough loses its morphological expression at a significant distance north of the Parties’ overlapping EEZ claims where the CLR is adjacent to the Laccadive Basin.<sup>171</sup> It is only here that a significantly shallower depth allows for natural prolongation to FOS-VIT31B upon which Mauritius’ entire claim rests. The position of the Chagos Trough relative to the Parties’ EEZ boundaries is demonstrated in Figure 7 below which is based on the same data in Figure 2.12 in the Memorial of Mauritius.<sup>172</sup>

<sup>162</sup> As noted above, Mauritius asserts its entitlement by delineating a line 60 M from that single FOS point: 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 (Annex 5), para. 8-4; Memorial of Mauritius, paras. 2.41–2.42.

<sup>163</sup> Mauritius’ attempt to claim an OCS where the only submerged prolongation is through the Maldives’ uncontested continental shelf is also inconsistent with paragraph 9.5.1(5) of the CLCS Guidelines, which states that the outer limit of a State’s continental shelf must be: “not further than ... [a] limit agreed to by States with opposite or adjacent coasts (in accordance with article 83 [of UNCLOS])”. Mauritius and the Maldives agree that the area to the north of the equidistance line between their respective coasts (whatever the precise coordinates of that line) constitutes the Maldives’ EEZ and continental shelf within 200 M.

<sup>164</sup> The northernmost segment, this is surmounted by the Lakshadweep Islands of India.

<sup>165</sup> Sometimes referred to as the Maldives Platform, this is surmounted by the Maldives archipelago.

<sup>166</sup> The southernmost segment, this is surmounted by the Chagos Archipelago.

<sup>167</sup> A long, narrow basin located between the northern part of the CLR to the west and the western continental margin of India to the east, its southern extent is defined by a very gently southwards sloping edge that ends at approximately 1°S, broadly coincident with the southeastern part of the Maldives’ EEZ. The depth varies from 200 m in the north to more than 4,000 m in the south.

<sup>168</sup> A ridge located off the southern tip of the Indian peninsula, it has a relief of approximately 1,000 m from the surrounding bathymetry of approximately 3,500 m and is characterised by a steep scarp on its eastern side where the seafloor relief drops from 3,000–4,200 m, whereas the gradient is relatively gentle on the western slope of the ridge.

<sup>169</sup> Memorial of Mauritius, para. 2.35. See also Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (Annex 5), para. 5-4 (the CLR “merges with the deep ocean floor at a depth of around 5000 m”).

<sup>170</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 (Annex 5), para. 5-4.

<sup>171</sup> *Ibid.*

<sup>172</sup> Figure 7 of this Counter-Memorial and Figure 2.12 of the Memorial of Mauritius are based on the General Bathymetric Chart of the Oceans (‘GEBCO’), a compilation global terrain model for ocean

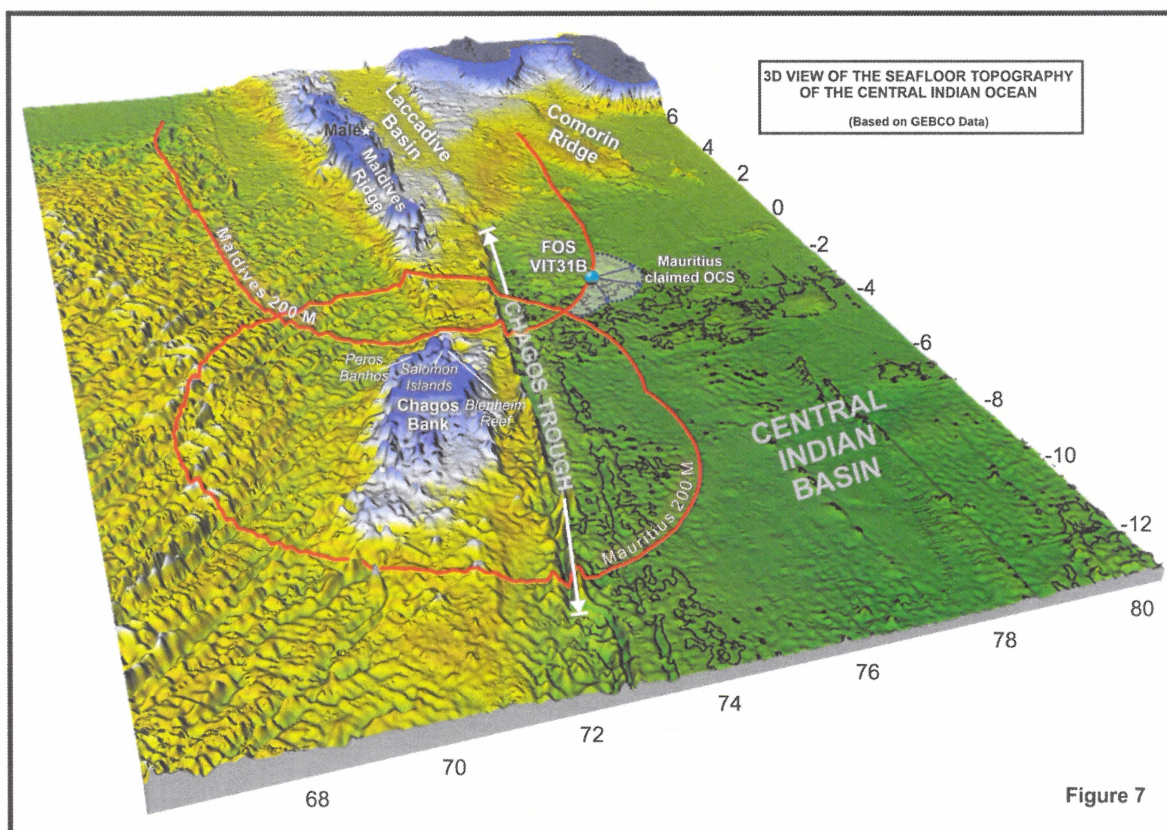


Figure 7

84. Mauritius has not claimed that the natural prolongation of its land territory traverses the Chagos Trough because that feature creates a clear break in the submerged prolongation of the Chagos Archipelago landmass (as shown by the red arrow in Figure 8 below).<sup>173</sup> In contrast, there is a direct and uninterrupted submerged prolongation from the Maldives' land territory to FOS-VIT31B, shown in Figure 8 as a straight green arrow from the island of Malé (the capital) across the Laccadive Basin, with FOS-VIT31B falling clearly within the continental margin of the Maldives.<sup>174</sup>

and land, providing elevation data, in metres, on a 15 arc-second interval grid, available at [www.gebco.net](http://www.gebco.net) accessed 24 November 2021.

<sup>173</sup> The Chagos Trough marks the boundary with, and forms part of, the deep ocean floor, which is expressly excluded from the continental margin under Article 76(3) UNCLOS.

<sup>174</sup> The base of slope region, within which any FOS point is located at the maximum change in gradient (indicated in light grey shading in Figure 8), encloses the Laccadive Basin, its associated highs and the Comorin Ridge.



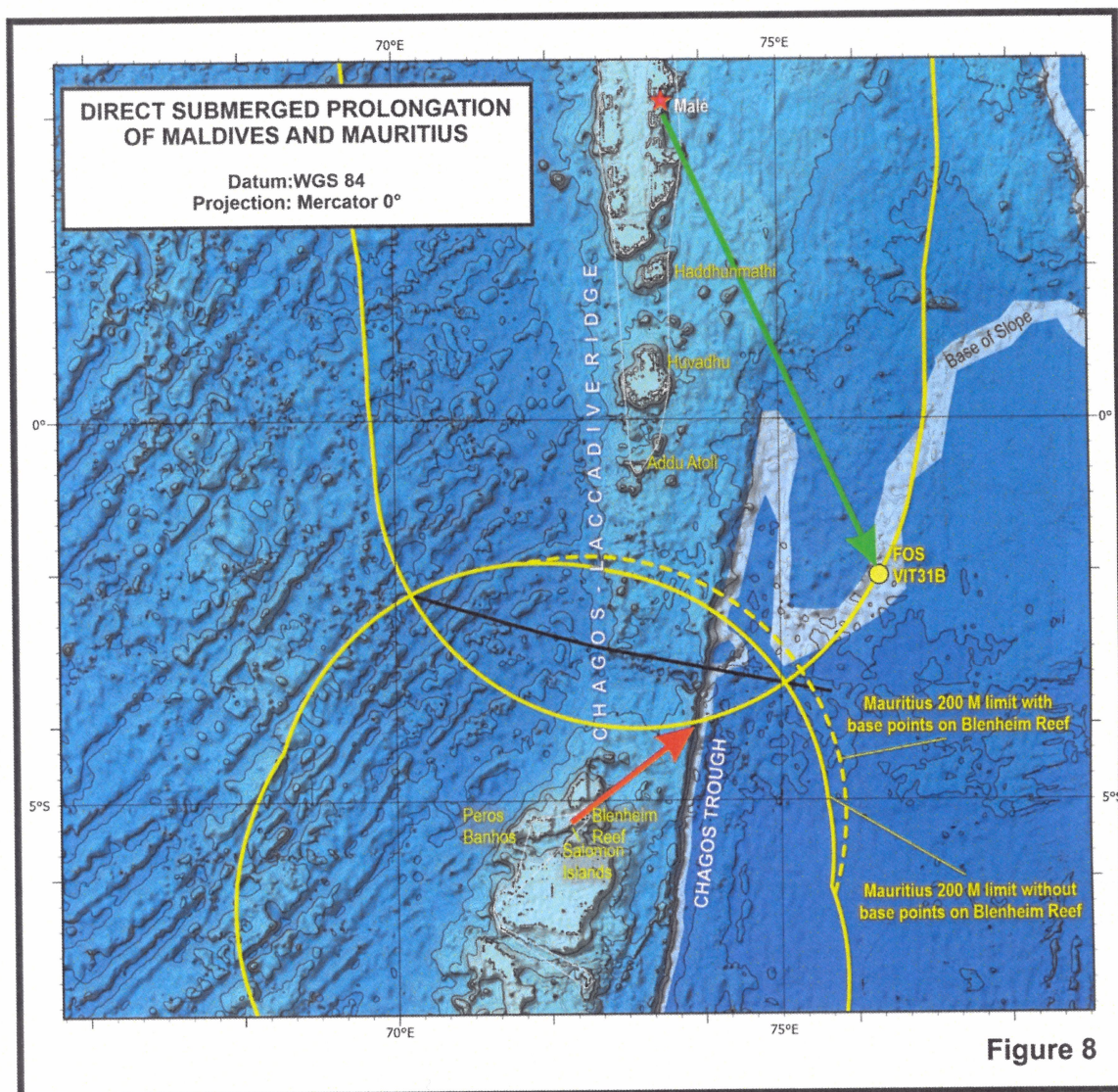


Figure 8

85. The only path by which *Mauritius* can show a prolongation from the landmass of the Chagos Archipelago to FOS-VIT31B passes well within the undisputed continental shelf of the Maldives within 200 M. This involves a convoluted submerged prolongation, first in a northeastward direction for some 400 M, 260 M of which is beyond the provisional equidistance line,<sup>175</sup> to a point where the Chagos Trough has lost its morphological expression in the Laccadive Basin, before abruptly turning in a southwestward direction for an additional 200 M, connecting to the southern part of the Laccadive Basin to arrive at FOS-VIT31B. Mauritius' claim to an OCS entitlement in the 'Northern Chagos Archipelago Region' is therefore purportedly derived from the Laccadive Basin and Comorin Ridge, which are morphologically connected only to the northern part of the CLR appurtenant to the Maldives and not to Mauritius. This is demonstrated in Figure 9 below.

<sup>175</sup>

This is 180 M beyond the northern limit of Mauritius' 200 M EEZ claim.



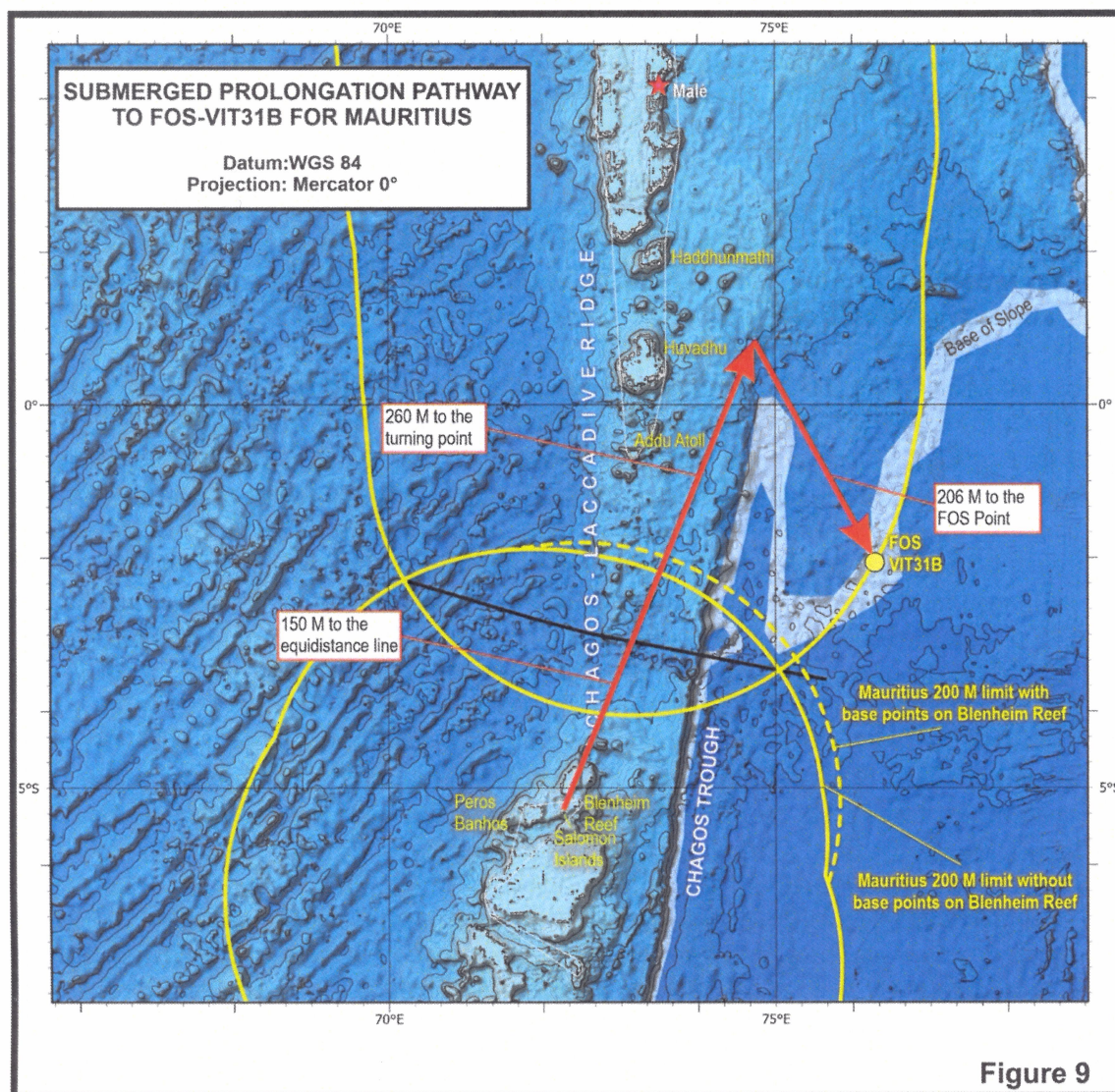


Figure 9

86. Accordingly, it is clear that Mauritius' new claim is manifestly unfounded under the plain terms of UNCLOS Article 76. Mauritius has no claim whatsoever of appurtenance to FOS-VIT31B. The Special Chamber cannot be satisfied that Mauritius' entitlement to an OCS exists.<sup>176</sup> Its claim to an OCS entitlement is therefore clearly inadmissible.

3. *Mauritius' proposed delimitation is predicated on the CLCS making a specific recommendation as to delineation*

87. It is well-established that, while *delimitation* is a task for an international tribunal,<sup>177</sup> the CLCS has exclusive competence to make final and binding recommendations as to *delineation* of the outer limits of a State's OCS entitlement. In *Bangladesh/Myanmar*, ITLOS stated:

"Just as the functions of the Commission are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts, so the exercise by international courts and tribunals of their

<sup>176</sup> See para. 79 above.

<sup>177</sup> Absent an agreement between the parties pursuant to Articles 74 and 83 of UNCLOS.

jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf.”<sup>178</sup>

88. Accordingly, absent a recommendation of the CLCS, a delimitation involving an OCS can be carried out only to the extent that it does not necessitate a decision on delineation, which an international tribunal cannot reach “without prejudice to the exercise by the Commission of its functions”.<sup>179</sup>
89. As set out further in Chapter 5 below, it is in some cases possible for an international court or tribunal to carry out a delimitation in the absence of a prior delineation without blurring the distinction of competencies under UNCLOS. This includes the drawing of a directional line of delimitation, without defining the end-point in recognition of the fact that the outer limits of the parties’ continental margin cannot be determined prior to a CLCS recommendation.<sup>180</sup> A delimitation of this sort is not predicated on, and does not prejudice, the CLCS process yielding a particular outcome. This is consistent with the practice of international courts and tribunals of drawing directional lines without defined endpoints in order to avoid prejudicing the rights of third parties.<sup>181</sup>
90. Contrary to this requirement, Mauritius’ proposed delimitation of the OCS necessarily requires the Special Chamber to presuppose the outcome of the CLCS recommendations as to delineation of the outer margins of the Parties’ OCS entitlements.
91. In particular, Mauritius’ proposed delimitation would have the Special Chamber apportion to each Party an ‘equal share’ of the area covering their allegedly overlapping claims to an OCS.<sup>182</sup> If Mauritius’ approach to delimitation were adopted, the area apportioned to each Party would be 11,149 km<sup>2</sup>.<sup>183</sup> This arbitrary proposal to discard entirely the three-stage methodology in respect of its alleged OCS entitlement is wholly without merit. Mauritius seeks to refashion geography<sup>184</sup> — and geology — and to defy

<sup>178</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379. This paragraph was cited with approval by the ICJ in *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 189.

<sup>179</sup> *Ibid.*, paras. 379, 394.

<sup>180</sup> See e.g. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 192, para. 144, and p. 197, para. 157; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 196. See further Chapter 5, para. 191 below.

<sup>181</sup> See *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, ICJ Reports 2007, p. 659 at p. 756, para. 312 (“The Court will not rule on an issue when in order to do so the rights of a third party that is not before it, have first to be determined (see *Monetary Gold Removed from Rome in 1943*, Judgment, I.C.J. Reports 1954, p. 19). Accordingly, it is usual in a judicial delimitation for the precise endpoint to be left undefined in order to refrain from prejudicing the rights of third States”).

<sup>182</sup> Memorial of Mauritius, Chapter 4, Part III, Section B.

<sup>183</sup> *Ibid.*, Figure 4.11 and para. 4.77.

<sup>184</sup> Cf. “[D]elimitation must not completely refashion geography or compensate for the inequalities of nature”: *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, para. 409. See also e.g.

the predictability and transparency of the same three-stage methodology that international courts and tribunals have consistently applied to delimitation of both the EEZ and the continental shelf beyond 200 M.<sup>185</sup>

92. But if its ‘equal share’ method *were* to be employed, Mauritius’ position would require the Special Chamber to carry out a delimitation that is necessarily predicated on the CLCS process resulting in a specific delineation whereby the Parties are granted, between them, the full area they claim as overlapping OCS entitlements. Thus, if the CLCS were to recommend that the Parties delineate their entitlements in such a way that they were not granted the exact OCS which they have claimed, then the apportionment of the area between them proposed by Mauritius would no longer be ‘equal’. That would defeat the sole rationale (deeply flawed as it is) which Mauritius has asserted in support of its proposed methodology. This is a further reason why the Special Chamber cannot proceed with the delimitation requested by Mauritius.

### III. Conclusion

93. The Special Chamber recognised in its Judgment on Preliminary Objections that the dispute before it was limited to the overlap between: (i) the Maldives’ EEZ, continental shelf within 200 M and OCS claim; and (ii) Mauritius’ EEZ and continental shelf within 200 M. It did not refer to any dispute concerning Mauritius’ new OCS claim, for the simple reason that no such dispute existed — and Mauritius first raised this claim several months after the Judgment was handed down, some two years after it had instituted proceedings. This fact alone puts Mauritius’ claim to an OCS entitlement outside the Special Chamber’s jurisdiction. Further, the fact that Mauritius has failed to file a full submission and to abide by the applicable time limits with respect to its current OCS claim, relied upon a critical FOS that is manifestly not appurtenant to its land territory, and requested a delimitation predicated on the CLCS ultimately making specific recommendations on delineation, all render its claim inadmissible. For these reasons, the Maldives invites the Special Chamber to dismiss Mauritius’ claim with respect to its OCS entitlement as outside the Chamber’s jurisdiction and inadmissible.

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*Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Decision of 30 June 1977, para. 249; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014 para. 397. Recently, the Court in *Somalia v. Kenya* confirmed the “principles [that] ‘there is . . . no question of refashioning geography, or compensating for the inequalities of nature’, ‘equity does not necessarily imply equality’ and ‘there can be no question of distributive justice’ (*Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, pp. 39-40, para. 46)”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 172. See further *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports 1969, p. 3 at p. 50, para. 91.

<sup>185</sup> See in particular *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 454–455 (para. 454 of which is quoted in Memorial of Mauritius, 25 May 2021, para. 4.67); *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 404, 465; *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, paras. 360, 526–527; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 196.

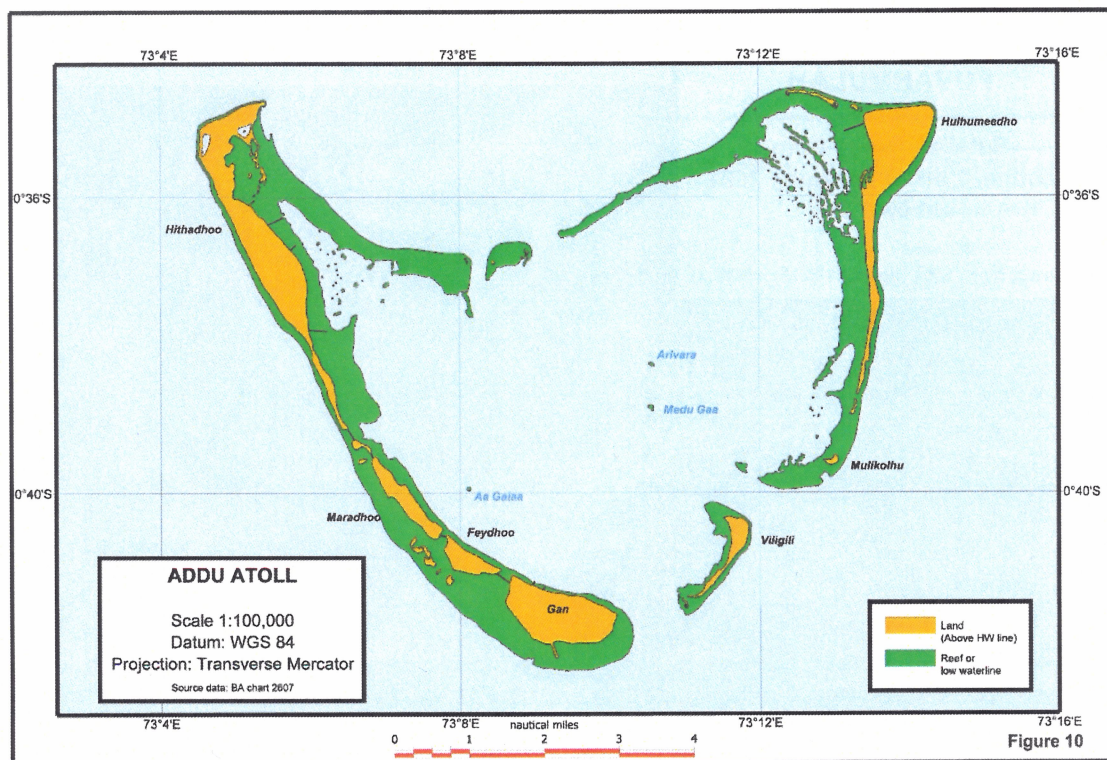
### CHAPTER 3: THE GEOGRAPHICAL FEATURES RELEVANT TO THE DISPUTE

94. This Chapter identifies the geographical features which are relevant to the dispute before the Special Chamber. It addresses:
- (a) The relevant geographical features of the Maldives (**Section I**); and
  - (b) The relevant geographical features of Mauritius (**Section II**).
95. As set out in Chapter 4, the Maldives does not agree with Mauritius that the LTE known as “Blenheim Reef” is part of the relevant coast or otherwise suitable for base points in the construction of a provisional equidistance line. This feature is addressed in the current Chapter (Section II) simply to demonstrate its physical characteristics for the legal analysis that follows.

#### I. The Maldives

96. The delimitation in this case concerns maritime areas to the south of the Maldives. There are two relevant features in the southern part of the Maldives, both of which can be seen in relation to the rest of the Maldives’ territory in Figure 2 in Chapter 1 above, and both of which generate coastal projections which overlap with coastal projections of Mauritius in the area to be delimited (as shown in Figure 19 in Chapter 4 below).
97. The first is Addu Atoll, which is the Maldives’ southernmost land territory. Addu Atoll is roughly triangular in shape. It is 10 miles from east to west and 6 miles from north to south, with a total size of 14.93 km<sup>2</sup>. It is fertile and consists of many low lying islands and islets situated on a barrier reef, surrounding a central lagoon which has general depths from 8–75 m. The population of Addu City (located on Addu Atoll) is approximately 25,170 inhabitants. An international airport is located on Gan, which is the most southerly island in the atoll. Addu Atoll is depicted in Figure 10 below.

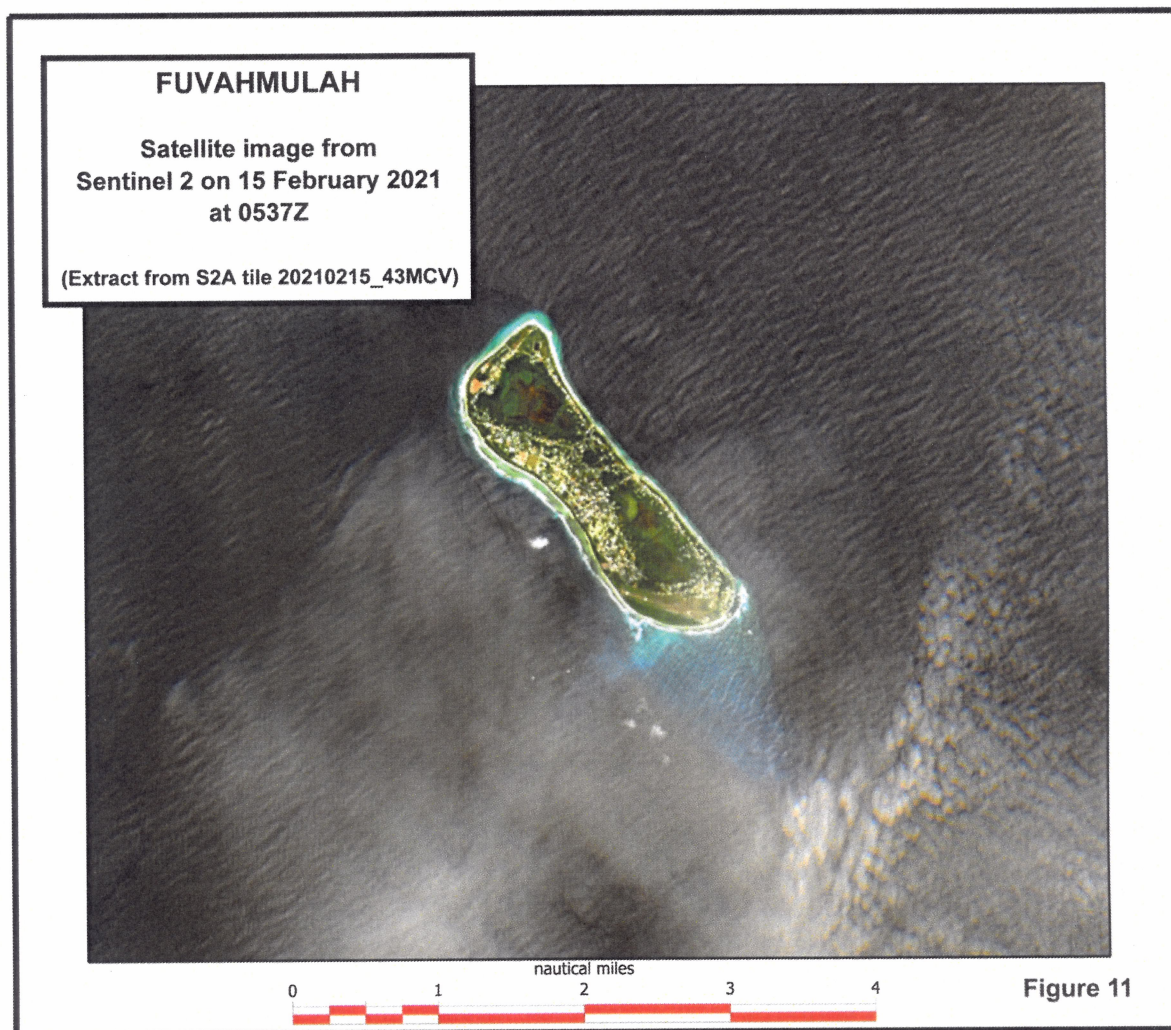




98. The second relevant feature is Fuvahmulah, shown in Figure 11 below.<sup>186</sup> This is an island located approximately 19.8 M north-east of Addu Atoll. It is 4.9 km<sup>2</sup> in size and has an airport. It is approximately 2 M long and 1 M wide with a population of 9,960.

<sup>186</sup> Fuvahmulah is shown on BA Chart 1011 (named there as Foammula) but only at a very small scale. Accordingly, a clearer, larger scale figure is provided here in the form of a satellite image.





## II. Mauritius

99. The Chagos Archipelago's largest and southernmost island is Diego Garcia, with a land area of approximately 29.83 km<sup>2</sup>. The islands of the Chagos Archipelago are located around the Great Chagos Bank, which spans some 12,642 km<sup>2</sup>.<sup>187</sup>
100. Four features of the Chagos Archipelago are relevant to the maritime delimitation dispute before the Special Chamber, although as set out above not all of them generate projections or are appropriate for the location of base points for the purposes of constructing the provisional equidistance line. These features can be seen in relation to the rest of the Chagos Archipelago in Figure 3 in Chapter 1 above.
101. First, Peros Banhos Atoll is a coral atoll comprising 32 islands with a total land area of 7.90 km<sup>2</sup>. In 1960 (prior to the forcible removal by the United Kingdom), Peros Banhos Atoll had a population of approximately 374.<sup>188</sup> At its closest point, Peros

<sup>187</sup> See more generally Memorial of Mauritius, para. 2.13.

<sup>188</sup> *Ibid.*, para. 2.16.

Banhos Atoll is approximately 59.8 M north of Diego Garcia. This feature is shown in Figure 12 below.

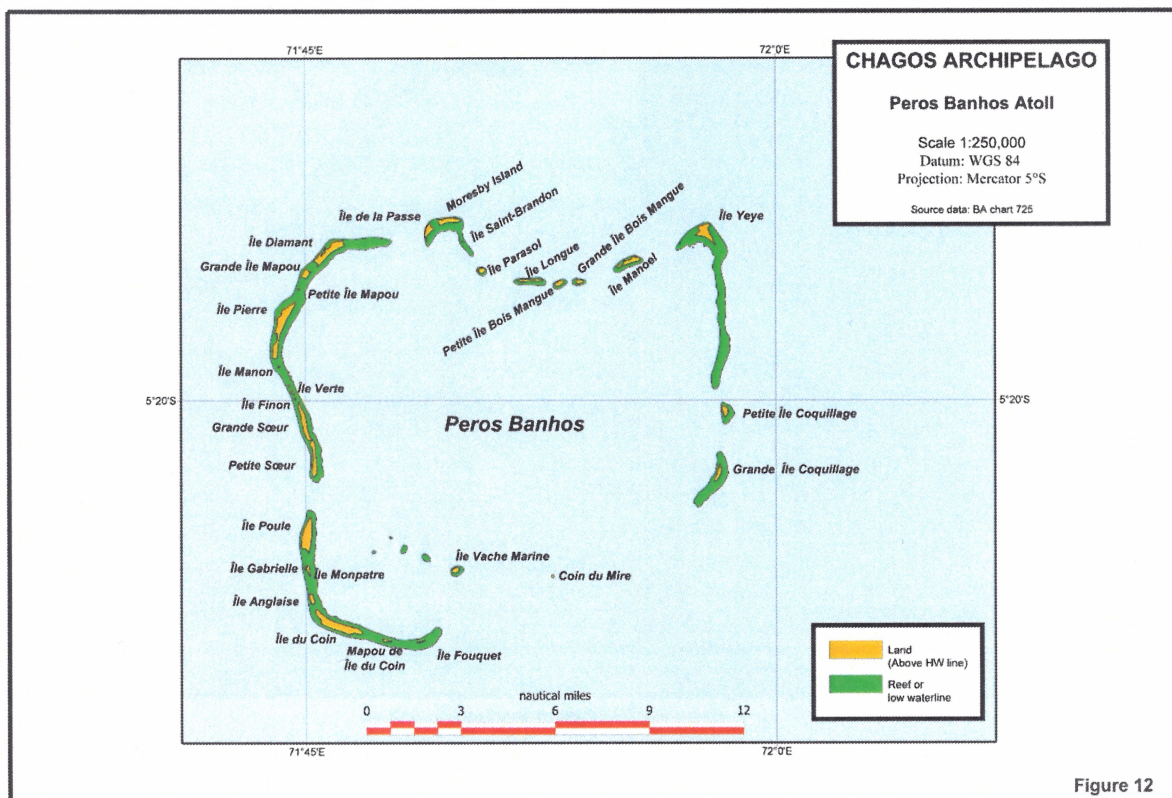


Figure 12

102. Second, Salomon Islands Atoll is a group of 11 islands with a total land area of 2.93 km<sup>2</sup>. In 1960 (prior to the forcible removability by the United Kingdom) the Salomon Islands Atoll had a population of approximately 200.<sup>189</sup> The islands are located around a central lagoon with a depth of 31 m. At its closest point, the Atoll is located 60.2 M from Diego Garcia. Salomon Islands Atoll is shown in Figure 13 below.

<sup>189</sup> *Ibid.*, para. 2.19.



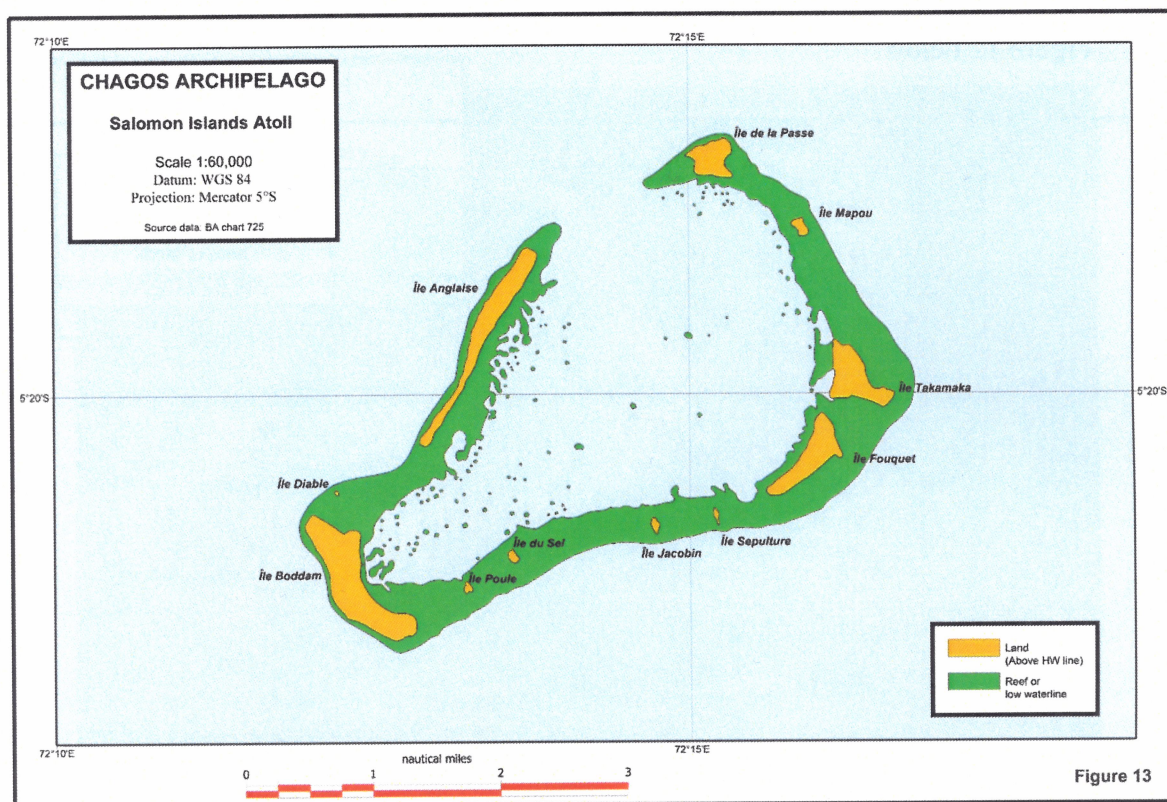
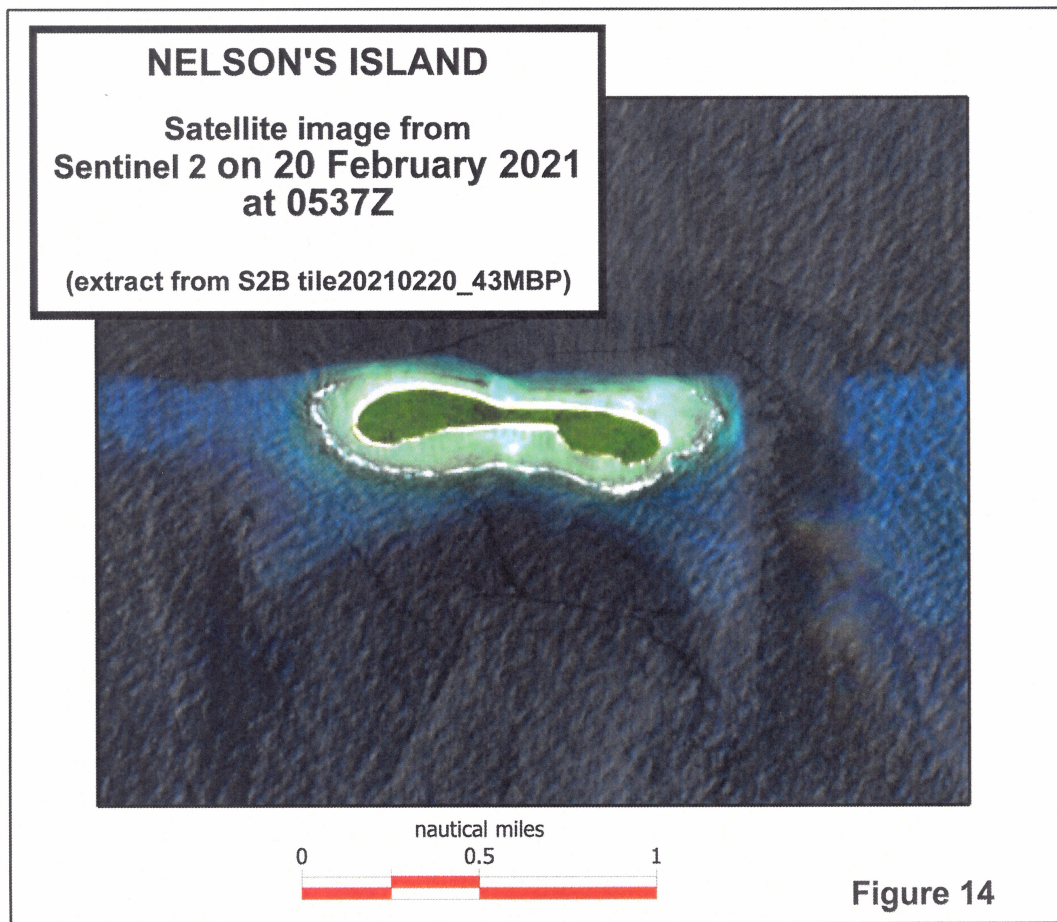


Figure 13

103. The third relevant feature is Nelson's Island, a small island lying on the northern edge of the Great Chagos Bank. This is shown on Figure 14 below.<sup>190</sup> The 2020 Edition of the South Indian Ocean Pilot (NP39) describes this Island as being covered in low scrub with a few coconut palms up to about 9 m high. The land area is 0.28 km<sup>2</sup>. It is currently a designated nature reserve.<sup>191</sup>

<sup>190</sup> Nelson's Island appears on BA Chart 727 but at a very small scale. Accordingly a clearer, larger scale figure is provided here in the form of a satellite image.

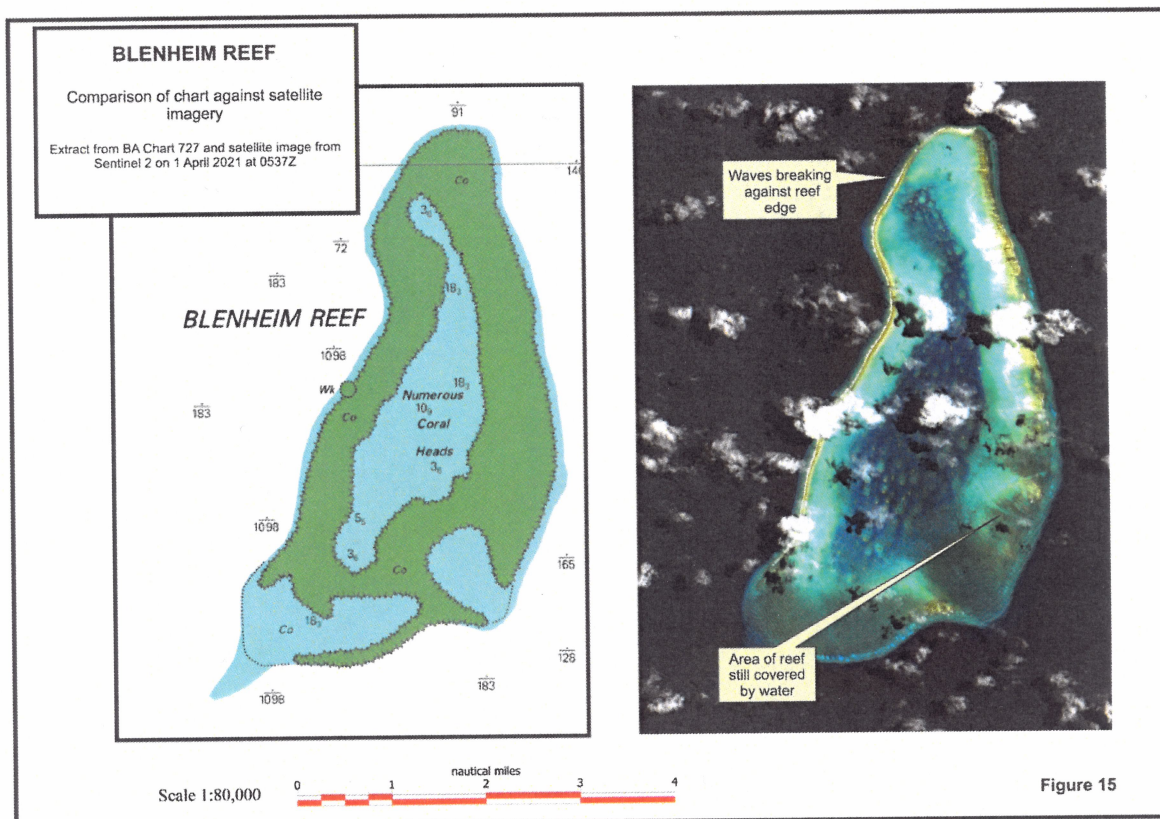
<sup>191</sup> Under the BIOT administration, it has been designated as a Strict Nature Reserve, and classified as an Important Bird Area: British Indian Ocean Territory, "Terrestrial Protected Areas" <<https://biot.gov.io/environment/terrestrial-protected-areas/>> accessed 24 November 2021 (Annex 67).



104. The fourth feature which arises in this dispute (but which the Maldives rejects as generating any projections or as an appropriate site for base points for the purposes of constructing an equidistance line) is Blenheim Reef, an atoll with a reef rim that is barely above water at lowest tides and completely submerged at other times. Like the atolls of the Chagos Archipelago which are permanently above water, Blenheim Reef has an internal lagoon, which reaches a depth of 17 m.
105. The location and dimensions of Blenheim Reef are charted at a large scale, having been verified by high resolution satellite imagery and aerial photography by the United Kingdom Hydrographic Office as the Primary Charting Authority (see Figure 15 below). Contrary to Mauritius' suggestion,<sup>192</sup> an on-site survey is not necessary to obtain this information.

<sup>192</sup> Memorial of Mauritius, para. 2.25.



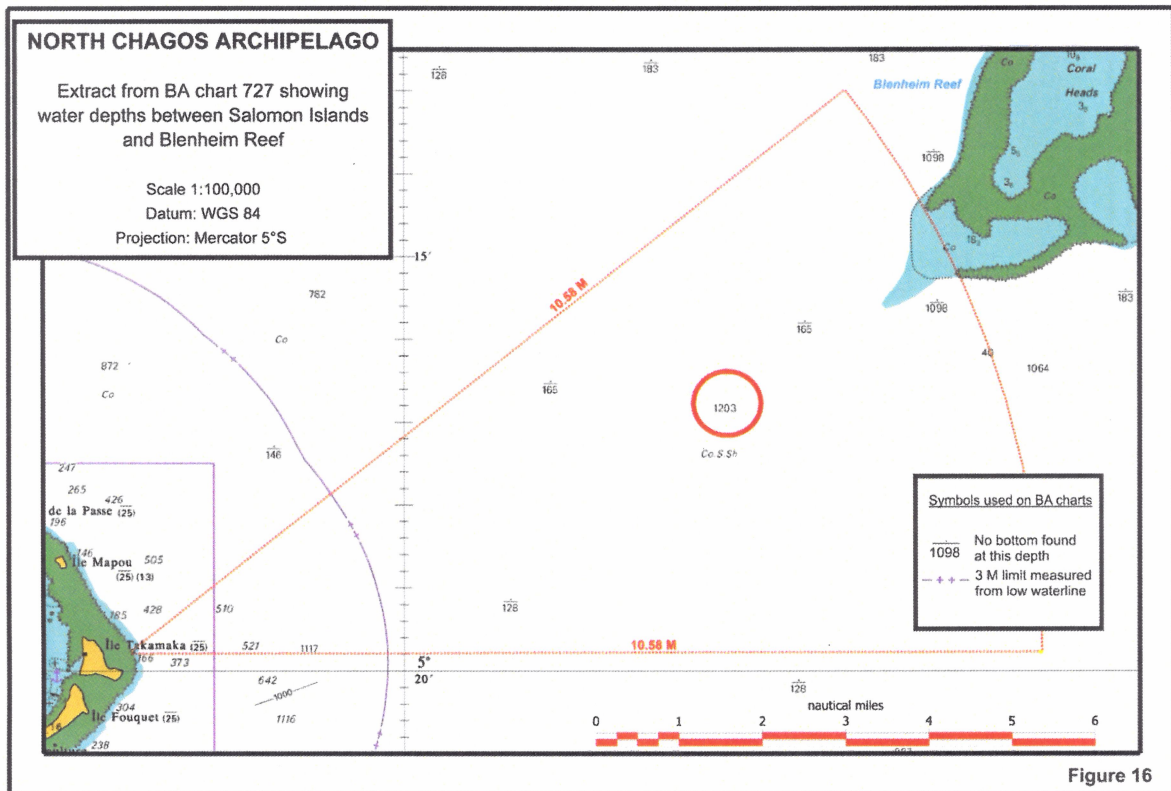


106. Mauritius has correctly identified that Blenheim Reef is an LTE within the meaning of Article 13(1) of UNCLOS.<sup>193</sup> Contrary to its suggestion, however, Blenheim Reef does not form part of Salomon Islands Atoll and is an entirely separate feature.<sup>194</sup> As shown on Figure 16 below, it is located 10.58 M to the northeast of Île Takamaka, the nearest point on Salomon Islands Atoll. As Figure 16 below shows, the ocean reaches significant depths between the Salomon Islands Atoll and Blenheim Reef; at approximately the midway point, the depth is 1,203 m (as indicated by the red circle). The two features are entirely disconnected.

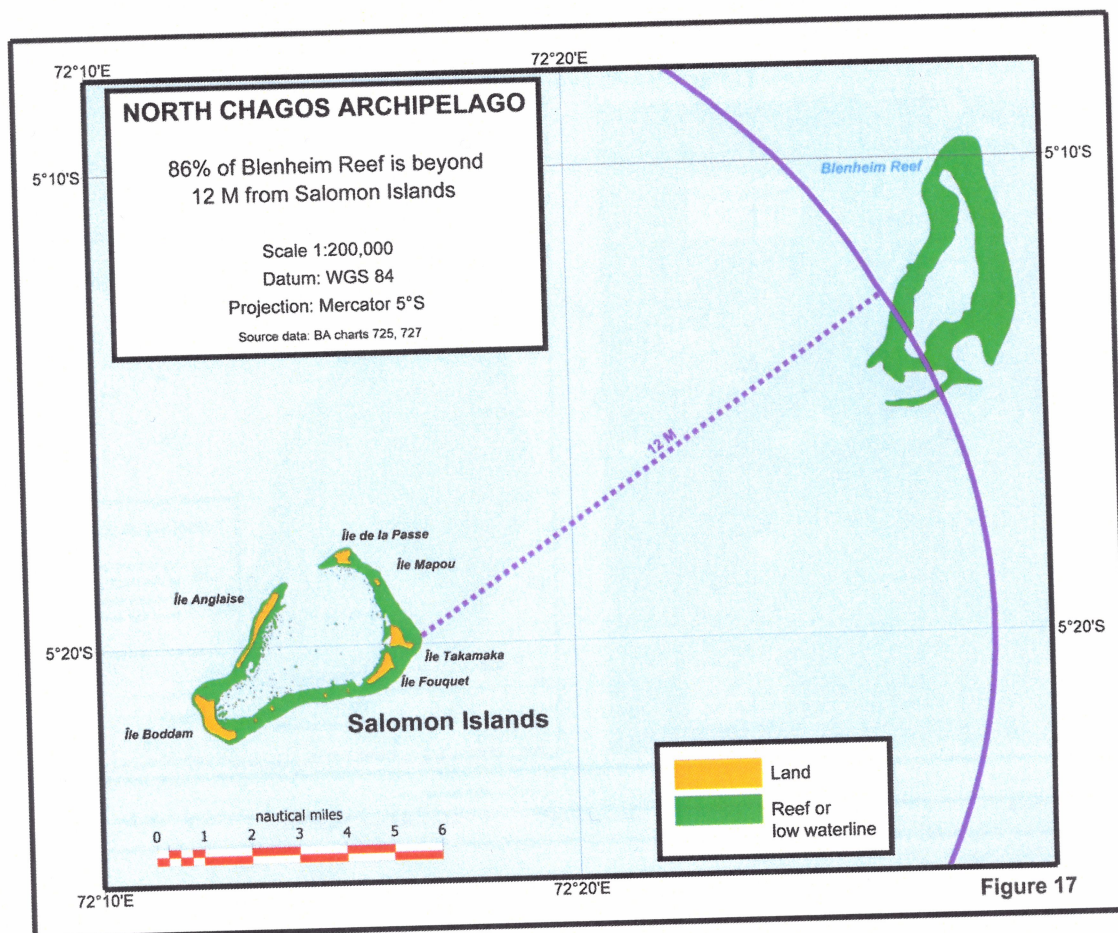
<sup>193</sup> *Ibid.*, para. 2.20.

<sup>194</sup> The Memorial states that Mauritius' relevant coast consists of "the entirety of Mauritius' north-facing coast on Peros Banhos Atoll and Salomon Islands Atoll, *including Blenheim Reef*" (emphasis added): *ibid.*, para. 4.26.





107. Further, only 14% of Blenheim Reef is located within 12 M of Salomon Islands Atoll (see Figure 17 below).

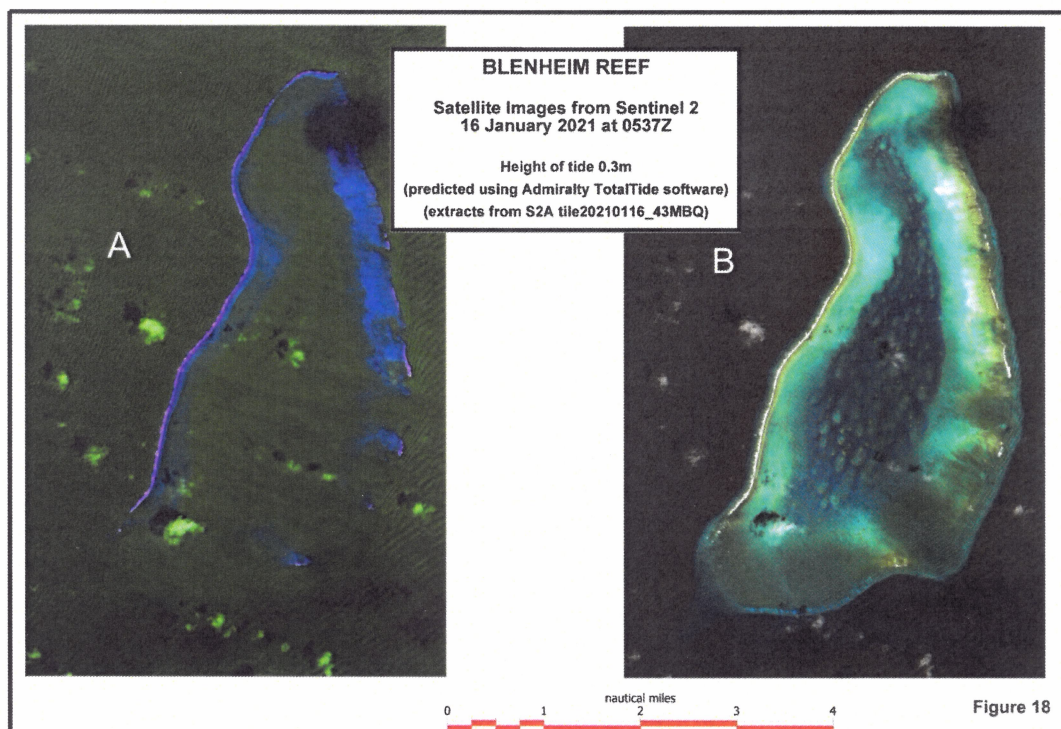


108. For significant periods of time, Blenheim Reef is fully submerged. A satellite image from January 2021 when the height of tide at that time was approximately 0.4 m (which is below Mean Sea Level<sup>195</sup>) shows the reef covered with water and waves just breaking at its highest point. Figure 18 below depicts this using a different combination of wavebands from the same satellite scene. Image A (using wavebands Red8, SWIR1, Red) clearly distinguishes land (appearing in shades of orange and green) from water (appearing in blue). The vibrant magenta shows the breaking waves which have a lot of air in them. Image B is a natural colour satellite image (using wavebands red, green, blue) showing ground features in colours similar to their appearance to the human visual system. In this image, the white areas show the reef edge against which waves are breaking.

<sup>195</sup>

The predicted time of Low Water was at 1020 local time and this image was taken approximately 50 minutes later. As height of the tide in this image is 0.3 m below Mean Sea Level (the mean of all sea level heights obtained over a long period of tidal observations with short time intervals), this image is consistent with the fact that the reef would remain continuously submerged for significant periods of time in the tidal cycle.





109. The relevance of these geographical features, and the grounds on which Blenheim Reef is irrelevant to delimitation of the maritime boundary, is addressed in Chapter 4 below.

## CHAPTER 4: DELIMITATION OF THE EEZ AND CONTINENTAL SHELF WITHIN 200 M

110. This Chapter addresses the delimitation of the Parties' EEZs and their continental shelves within 200 M from the baselines from which the breadth of their respective territorial seas are measured.
111. Except where indicated otherwise, references in this Chapter to the Parties' EEZs should be taken as references to both the Parties' EEZs and continental shelves within 200 M, the abbreviation simply being for ease. The Maldives recalls that, in the area in which a State is entitled to an EEZ, it is also entitled to a continental shelf. As held by the ICJ in *Libya/Malta*:

“Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf.”<sup>196</sup>

112. In its Judgment on Preliminary Objections, the Special Chamber noted that “it is clear from the national legislation adopted by the Parties that their respective claims to an exclusive economic zone in the relevant area overlap”.<sup>197</sup>
113. To the extent that the distance between opposite coasts of Mauritius and the Maldives is less than 400 M, there is indeed an overlap between their respective claims to an EEZ and continental shelf within 200 M. The Parties agree that, in such a situation, a delimitation shall be effected “in order to achieve an equitable solution”.<sup>198</sup> The Parties also agree that, absent an agreement, the methodology applied by international courts and tribunals to achieve such a result is the well-established three-stage equidistance/relevant circumstances methodology.<sup>199</sup> As summarised in the 2012 ICJ judgment in *Nicaragua v. Colombia*:<sup>200</sup>

“191. ... In the first stage, the Court establishes a provisional delimitation line between territories (including the island territories) of the Parties.

In doing so it will use methods that are geometrically objective and appropriate for the geography of the area. This task will consist of the construction of an equidistance line, where the relevant coasts are adjacent, or a median line between the two coasts, where the

<sup>196</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, ICJ Reports 1985, p. 13 at p. 33, para. 34.

<sup>197</sup> Judgment on Preliminary Objections, para. 327.

<sup>198</sup> Memorial of Mauritius, para. 4.12.

<sup>199</sup> *Ibid.*, paras. 4.13–4.17.

<sup>200</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at pp. 695–696, paras. 191–193. That case concerned an opposite coast, as in the present case. Mauritius refers at paras. 4.14–4.16 of its Memorial to case law which relates to delimitation where the relevant coasts are adjacent. In *Somalia v. Kenya*, the ICJ had the opportunity to confirm once more that “[s]ince the adoption of the Convention, the Court has gradually developed a maritime delimitation methodology to assist it in carrying out its task. In determining the maritime delimitation line, the Court proceeds in three stages, which it described in the case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (Judgment, I.C.J. Reports 2009, pp. 101–103, paras. 115–122)”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 122.

relevant coasts are opposite, unless in either case there are compelling reasons as a result of which the establishment of such a line is not feasible (see *Territorial and Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea* (*Nicaragua v. Honduras*), Judgment, I.C.J. Reports 2007 (II), p. 745, para. 281). ...

192. In the second stage, the Court considers whether there are any relevant circumstances which may call for an adjustment or shifting of the provisional equidistance/median line so as to achieve an equitable result. If it concludes that such circumstances are present, it establishes a different boundary which usually entails such adjustment or shifting of the equidistance/median line as is necessary to take account of those circumstances. ...

193. In the third and final stage, the Court conducts a disproportionality test in which it assesses whether the effect of the line, as adjusted or shifted, is that the Parties' respective shares of the relevant area are markedly disproportionate to their respective relevant coasts."<sup>201</sup>

114. The Maldives, however, does not agree with Mauritius' application of this methodology. In particular, Mauritius' claim is premised on Blenheim Reef, which is a remote LTE (see Chapter 3 above): (i) forming part of the relevant coast; and (ii) being the site of base points for the purposes of the construction of the provisional equidistant line in the first stage. The Maldives' position is that Blenheim Reef: (i) does not form part of the relevant coast; and (ii) is not appropriate for the location of base points. This is the central dispute dividing the Parties.

115. Since Mauritius' resulting proposed equidistance line is flawed, the Maldives will apply each stage of the three-step methodology to arrive at the appropriate delimitation. In **Section I**, the Maldives will address the first stage by identifying the Parties' relevant coasts (**subsection A**); identifying the Parties' base points (**subsection B**); and, based on the foregoing, constructing the provisional delimitation line (**subsection C**).

116. In **Section II**, the Maldives will address the second stage of the methodology, and explain that the provisional equidistance line drawn in accordance with the relevant coast and correct base points does not need to be adjusted because there are no relevant circumstances calling for such an adjustment. If, however, the provisional line

<sup>201</sup>

The Court then quoted from the *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 103, para. 122 as follows: "Finally, and at a third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line . . . A final check for an equitable outcome entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths. This is not to suggest that these respective areas should be proportionate to coastal lengths — as the Court has said 'the sharing out of the area is therefore the consequence of the delimitation, not vice versa' (*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, p. 67, para. 64)": *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 696, para. 193.



constructed at the first stage were to use base points located on Blenheim Reef (*quod non*), this would have such a disproportionate effect that an adjustment would be required at the second stage.

117. **Section III** will address the third stage of the methodology and conclude that the equidistance line constructed by the Maldives does not generate any marked disproportionality.
118. **Section IV** will identify the boundary between the Parties' EEZs and continental shelves within 200 M that results from the correct application of the three-stage methodology.

### I. The provisional delimitation line

119. According to the three-stage methodology summarised above, a provisional maritime boundary is to be constructed as an equidistance or a median line.<sup>202</sup> This in turn depends on identification of the coasts and base points which are relevant to delimitation.

#### A. The identification of the relevant coasts

120. It is well established that “[a]n essential step in maritime delimitation is identifying the relevant coasts: those that ‘generate projections which overlap with projections from the coast of the other Party’”.<sup>203</sup> This is indeed an “essential step”, because there can be no delimitation where there are no overlapping projections of the relevant coasts.
121. The notion of “coastal projections” is of course to be distinguished from the coastal States’ claims. A given feature does not generate projections merely because a State asserts that it does. Rather, the determination of the coasts that generate overlapping projections for the purpose of the delimitation process is a matter of objective determination. As recalled by ITLOS in *Bangladesh/Myanmar*, the first stage of the delimitation process consists of “construct[ing] a provisional equidistance line, based on the geography of the Parties’ coasts and mathematical calculations”.<sup>204</sup>
122. This subsection addresses in turn the notion of “coast” (**subsection 1**), the relevant coast of the Maldives (**subsection 2**), and the relevant coast of Mauritius (**subsection 3**).

<sup>202</sup> Strictly, the term ‘equidistant line’ may be used when addressing delimitation of adjacent coasts and the term ‘median line’ may be used when addressing delimitation of opposite coasts (as indicated in the quotation from the ICJ set out at para. 113 above). For present purposes the terms are used interchangeably.

<sup>203</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 181, para. 108, quoting *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 97, para. 99. In *Somalia v. Kenya*, the Court confirmed that “[t]he Court must first identify the relevant coasts of the Parties, namely those coasts whose projections overlap (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 97, para. 99)”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 132.

<sup>204</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 240.

## 1. The notion of “coast”

123. It is a well-established principle that “maritime rights derive from the coastal State’s sovereignty over the land”.<sup>205</sup> As stated by the ICJ in the *North Sea Continental Shelf* cases, “the land is the legal source of the power which a State may exercise over territorial extensions to seaward”.<sup>206</sup> Since it is “the land [which] dominates the sea”,<sup>207</sup> it is “the coasts ... which generate the rights ... to the continental shelf and the exclusive economic zone”.<sup>208</sup> Accordingly, the coast of the territory of the State is “decisive”<sup>209</sup> in defining maritime projections. As regards a delimitation process concerning two opposite States, the relevant coasts of the two State are those parts of the land next to the sea that generate overlapping projections.<sup>210</sup> This is common ground between the Parties.<sup>211</sup>

## 2. The relevant coast of the Maldives

124. Mauritius suggests, with no explanation, that the relevant coast of the Maldives consists of some, but not all, of the southern coasts of Addu Atoll.<sup>212</sup> This is incorrect. All the southern coasts of Addu Atoll, as well as the southern coast of Fuvahmulah, form the Maldives’ relevant coast because all of those portions of the Maldives’ coast generate projections overlapping with projections from the coast of the Chagos Archipelago. This is shown in Figure 19 below.

<sup>205</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 97, para. 185. See also *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, ICJ Reports 1978, p. 3 at p. 36, para. 86.

<sup>206</sup> *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports 1969, p. 3 at p. 51, para. 96.

<sup>207</sup> Described as “axiomatic” (see *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 279), this point has been made referred to frequently. See e.g. *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports 1969, p. 3 at p. 51, para. 96; *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, ICJ Reports 1978, p. 3 at p. 36, para. 86; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 97, para. 185; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, ICJ Reports 2007, p. 659 at p. 699, para. 126; *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 185; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 674, para. 140.

<sup>208</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 89, para. 77.

<sup>209</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18 at p. 61, para. 73.

<sup>210</sup> See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 97, para. 99 (“the coast, in order to be considered as relevant for the purpose of the delimitation, must generate projections which overlap with projections from the coast of the other Party. Consequently ‘the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court’ (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 61, para. 75)”).

<sup>211</sup> Memorial of Mauritius, paras. 4.22–4.24.

<sup>212</sup> *Ibid.*, Figure 4.3.

## OVERLAPPING PROJECTIONS

Areas of overlapping 200 M  
projections measured from the  
relevant coasts of the Parties

1:6,000,000  
Datum: WGS 84  
Projection: Mercator 3°15' N

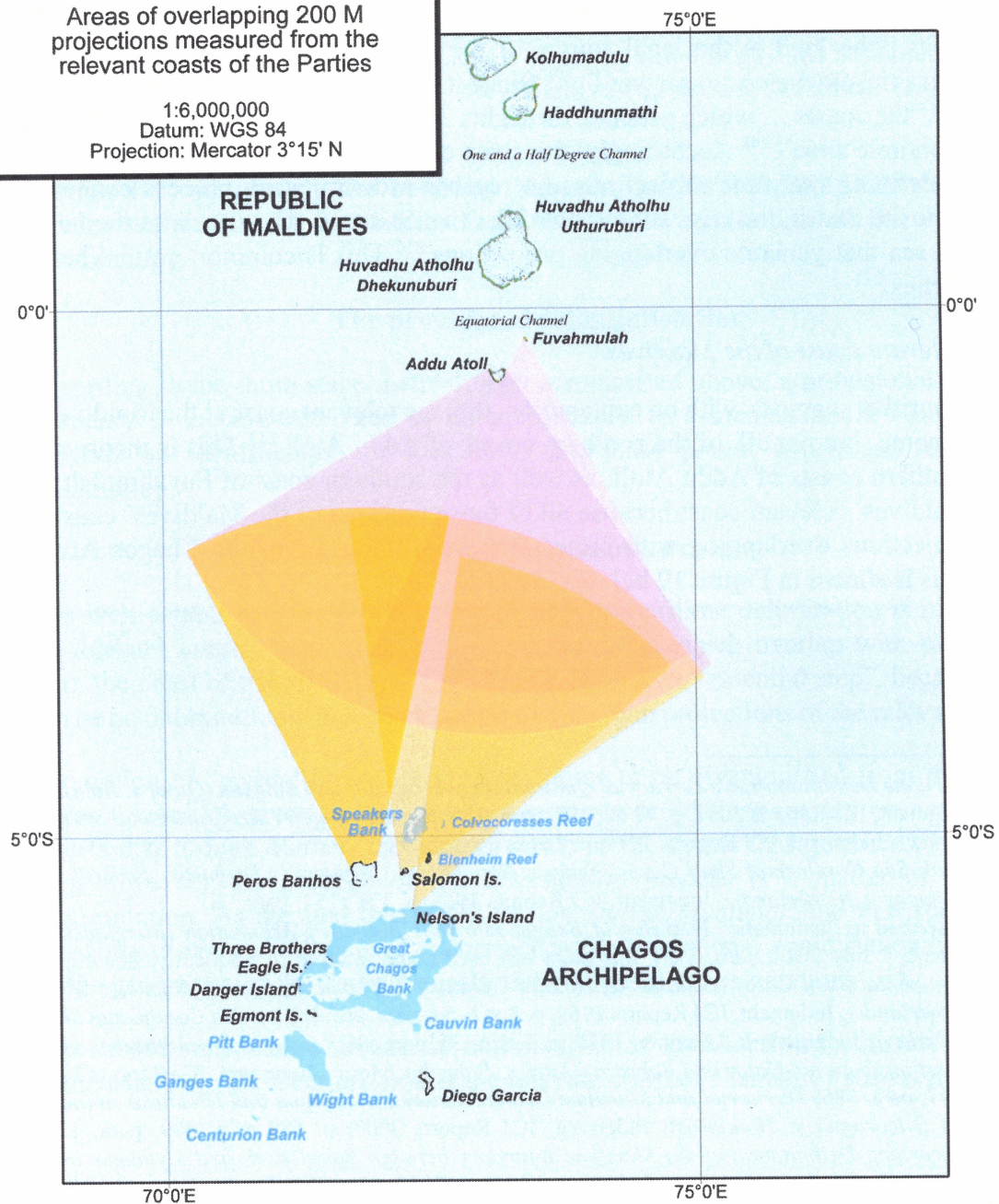


Figure 19



125. The correct representation of the Maldives' relevant coast appears on Figure 20 below. This shows that the length of the Maldives' relevant coast is 39.2 km, not 27.4 km as asserted by Mauritius.<sup>213</sup>

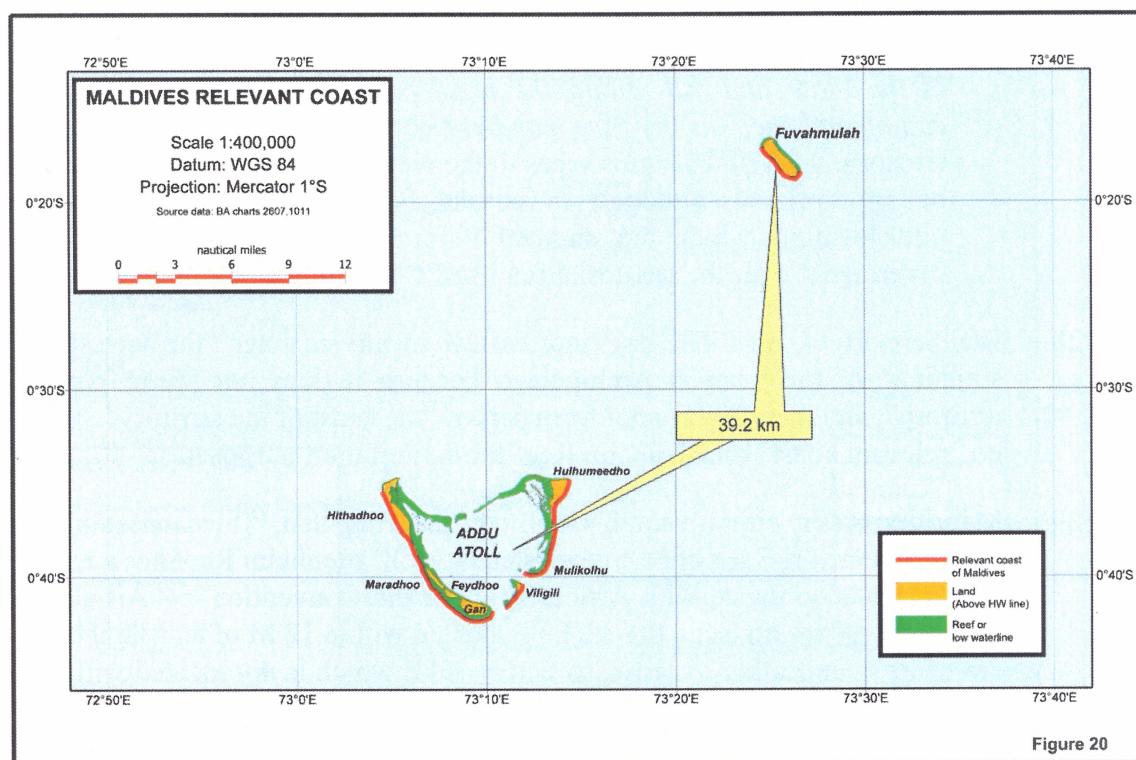


Figure 20

### 3. The relevant coast of Mauritius

126. Mauritius asserts that its “relevant coast” contains not only the shores of a series of islands located in Peros Banhos Atoll and Salomon Islands Atoll, but also the northern approximate low-water line of Blenheim Reef,<sup>214</sup> on the basis that, according to Mauritius, Blenheim Reef “has a territorial sea of its own”.<sup>215</sup>
127. The Maldives disagrees with Mauritius. Blenheim Reef is not part of the relevant coast for delimitation purposes. It is only “the coast of the territory” of a State which determines its entitlement to maritime areas.<sup>216</sup> It is therefore “the *terrestrial territorial situation* that must be taken as the starting point for determination of the maritime rights of a coastal State.”<sup>217</sup> By contrast, an LTE does not form part of “the territory” of the

<sup>213</sup> *Ibid.*, para. 4.27 and Figure 4.3.

<sup>214</sup> *Ibid.*, para. 4.26 and Figure 4.2.

<sup>215</sup> *Ibid.*, para. 2.20.

<sup>216</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 89, para. 77, quoting *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18 at p. 61, para. 73 (emphasis added).

<sup>217</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 97, para. 185 (emphasis added).

coastal State, and cannot reflect “the terrestrial territorial situation”. As confirmed by the UNCLOS Tribunal in the *South China Sea* arbitration:

“With respect to the status of low-tide elevations, the Tribunal considers that notwithstanding the use of the term ‘land’ in the physical description of a low-tide elevation, such *low-tide elevations do not form part of the land territory of a State in the legal sense*. Rather *they form part of the submerged landmass of the State and fall within the legal regimes for the territorial sea or continental shelf, as the case may be*. Accordingly, and as distinct from land territory, the Tribunal subscribes to the view that ‘low-tide elevations cannot be appropriated, although ‘a coastal State has sovereignty over low-tide elevations which are situated within its territorial sea, since it has sovereignty over the territorial sea itself’.”<sup>218</sup>

128. Blenheim Reef, an LTE, does not reflect in any manner “the terrestrial territorial situation” of the Chagos Archipelago because it does not “form part of the land territory”, and therefore cannot form part of “the coast of the territory”. There is simply no “relevant coast” on Blenheim Reef for delimitation purposes.
129. Mauritius tries to circumvent this reality by asserting that, “[b]ecause it is located within the 12 M territorial sea of Salomon Islands Atoll, Blenheim Reef has a territorial sea of its own, in accordance with Article 13(2) of the Convention”.<sup>219</sup> Article 13(2) of the Convention does not state that an LTE located within 12 M of an island has a territorial sea of its own. Rather, it provides that an LTE which is *not* located within 12 M of an island does *not* have a territorial sea of its own. LTEs located within 12 M of the territorial sea are instead addressed in Article 13(1), which is simply a provision on the possible location of baselines for measuring the breadth of the territorial sea, inserted in the section of UNCLOS devoted to “Limits of the territorial sea”.<sup>220</sup> Accordingly, baselines are manifestly not “coasts” capable of generating projections. It is the land, not baselines, which dominates the sea. Baselines are merely lines on maps from which mathematical measurements can be calculated. The rules permitting coastal States to draw straight baselines, or to locate baselines on the low-water line of an LTE, for the purposes of measuring their territorial seas do not transform those baselines into a “coast” capable of generating projections.
130. The portions of the coast of the Chagos Archipelago which generate projections overlapping with projections from the coast of the Maldives are depicted in Figure 19 above. Mauritius’ relevant coast is accordingly located on islands situated in Peros Banhos Atoll and Salomon Islands Atoll (as identified by Mauritius at Figure 4.2 of its Memorial), and also on Nelson’s Island (which similarly generates an overlapping projection). It does not include Blenheim Reef. Mauritius’ relevant coast is represented

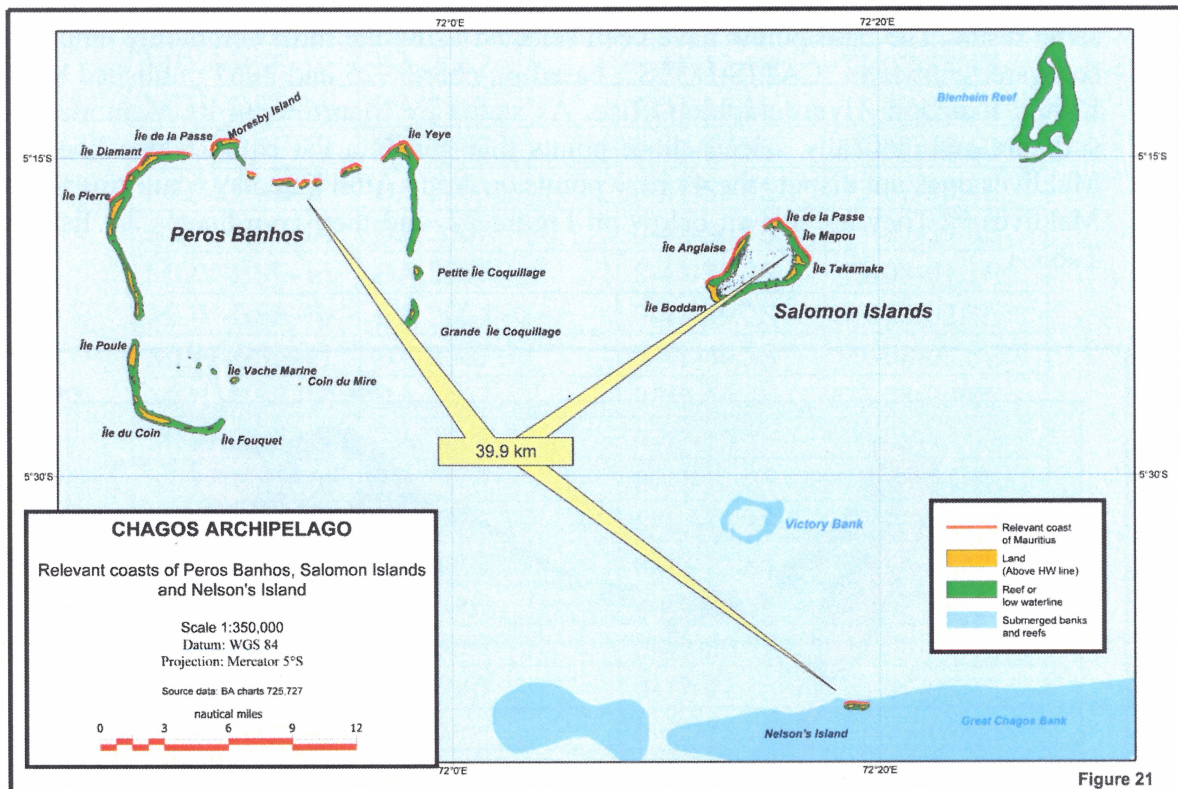
<sup>218</sup> *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 309 (emphasis added). See also *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 641, para. 26.

<sup>219</sup> Memorial of Mauritius, para. 2.20.

<sup>220</sup> As stated by the ICJ in 2012 in *Nicaragua v. Colombia*, LTEs “contribute to the baseline from which the breadth of the territorial sea is measured” and can be used “for the purpose of measuring the breadth of the territorial sea”: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at pp. 692–693, paras. 182–183.



on Figure 21 below, with a total length of 39.9 km, not 46.8 km as erroneously calculated by Mauritius.<sup>221</sup>



#### B. The selection of base points

131. In drawing a provisional equidistance line, “[t]he first step to be taken ... is to select the base points for the construction of that line.”<sup>222</sup> This selection should consist of “the most appropriate base points on the relevant coasts of the Parties”.<sup>223</sup> As recently confirmed by the ICJ, “the delimitation methodology is based on the geography of the coasts of the two States concerned, and ... a median or equidistance line is constructed using base points appropriate to that geography”.<sup>224</sup>
132. This subsection addresses in turn the most appropriate base points on the coast of the Maldives (**subsection 1**) and Mauritius (**subsection 2**).

<sup>221</sup> Memorial of Mauritius, para. 4.27 and Figure 4.2.

<sup>222</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 241.

<sup>223</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 190, para. 135.

<sup>224</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 111.



1. *The selection of base points on the Maldives' relevant coast*

133. The selection of base points on the coasts of the Maldives is agreed. The Maldives has used a similar methodology to that employed by Mauritius<sup>225</sup> and has generated the same result. The base points have been selected using the most commonly employed software, known as "CARIS-LOTS", based on charts 725 and 2067 published by the United Kingdom Hydrographic Office. As stated by Mauritius in its Memorial, the software automatically selects those points that generate the equidistance line. The Maldives does not dispute the 41 base points on Addu Atoll listed by Mauritius for the Maldives.<sup>226</sup> They are shown below on Figure 22, and their coordinates are listed at Table 1.

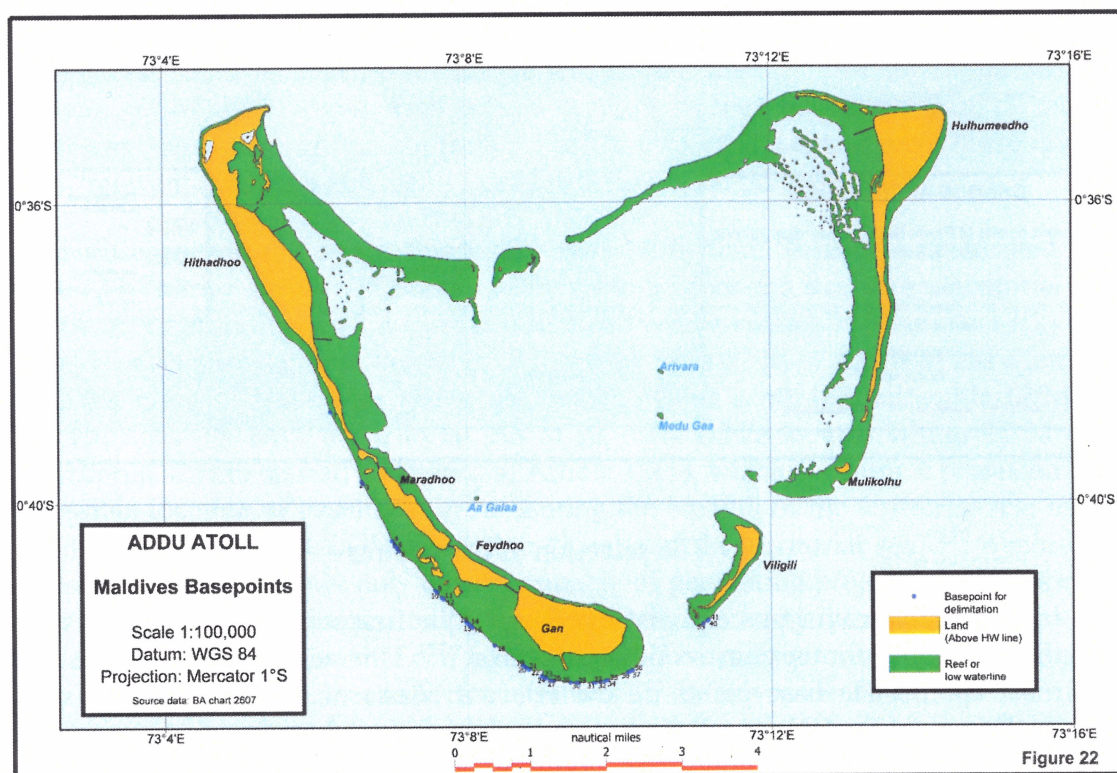


TABLE 1

Maldives Base Points			
Base Point	Chart Number	Latitude	Longitude
MDV-BSE-1	BA 2067	0-38-47.0S	73-06-11.7E
MDV-BSE-2	BA 2067	0-39-43.3S	73-06-36.3E
MDV-BSE-3	BA 2067	0-39-45.0S	73-06-37.2E
MDV-BSE-4	BA 2067	0-40-30.7S	73-07-00.2E
MDV-BSE-5	BA 2067	0-40-33.8S	73-07-02.2E

<sup>225</sup> Memorial of Mauritius, para. 4.29.

<sup>226</sup> *Ibid.*, and Table 4.1.

MDV-BSE-6	BA 2067	0-40-35.4S	73-07-03.3E
MDV-BSE-7	BA 2067	0-40-37.0S	73-07-04.3E
MDV-BSE-8	BA 2067	0-40-38.6S	73-07-05.4E
MDV-BSE-9	BA 2067	0-41-10.7S	73-07-34.1E
MDV-BSE-10	BA 2067	0-41-12.1S	73-07-35.4E
MDV-BSE-11	BA 2067	0-41-16.1S	73-07-39.3E
MDV-BSE-12	BA 2067	0-41-17.5S	73-07-40.6E
MDV-BSE-13	BA 2067	0-41-35.5S	73-07-58.4E
MDV-BSE-14	BA 2067	0-41-36.9S	73-07-59.8E
MDV-BSE-15	BA 2067	0-41-38.2S	73-08-01.1E
MDV-BSE-16	BA 2067	0-41-39.2S	73-08-02.3E
MDV-BSE-17	BA 2067	0-41-40.3S	73-08-03.5E
MDV-BSE-18	BA 2067	0-41-54.4S	73-08-20.8E
MDV-BSE-19	BA 2067	0-42-10.5S	73-08-42.9E
MDV-BSE-20	BA 2067	0-42-11.6S	73-08-44.4E
MDV-BSE-21	BA 2067	0-42-12.8S	73-08-46.1E
MDV-BSE-22	BA 2067	0-42-13.8S	73-08-47.9E
MDV-BSE-23	BA 2067	0-42-19.5S	73-08-58.2E
MDV-BSE-24	BA 2067	0-42-20.3S	73-08-59.5E
MDV-BSE-25	BA 2067	0-42-21.1S	73-09-01.2E
MDV-BSE-26	BA 2067	0-42-22.7S	73-09-05.1E
MDV-BSE-27	BA 2067	0-42-23.1S	73-09-07.3E
MDV-BSE-28	BA 2067	0-42-24.5S	73-09-20.7E
MDV-BSE-29	BA 2067	0-42-24.8S	73-09-25.0E
MDV-BSE-30	BA 2067	0-42-24.8S	73-09-27.1E
MDV-BSE-31	BA 2067	0-42-24.7S	73-09-38.6E
MDV-BSE-32	BA 2067	0-42-24.6S	73-09-40.6E
MDV-BSE-33	BA 2067	0-42-24.0S	73-09-44.2E
MDV-BSE-34	BA 2067	0-42-23.2S	73-09-48.1E
MDV-BSE-35	BA 2067	0-42-22.7S	73-09-50.0E
MDV-BSE-36	BA 2067	0-42-16.6S	73-10-05.9E
MDV-BSE-37	BA 2067	0-42-15.9S	73-10-07.7E
MDV-BSE-38	BA 2067	0-42-14.9S	73-10-09.4E
MDV-BSE-39	BA 2067	0-41-37.9S	73-11-05.9E
MDV-BSE-40	BA 2067	0-41-35.6S	73-11-09.1E
MDV-BSE-41	BA 2067	0-41-12.1S	73-11-10.2E

## 2. *The selection of base points on Mauritius' relevant coast*

134. The Maldives does not, however, agree with the base points selected by Mauritius with respect to Mauritius' relevant coast. Mauritius purports to situate base points on a series of islands located on Peros Banhos Atoll, and also on Blenheim Reef. However, the base points located on Blenheim Reef should be rejected as inappropriate for the

reasons set out below, and Mauritius' base points should instead be located on Peros Banhos Atoll and Salomon Islands Atoll.

*a. Blenheim Reef is not appropriate for locating base points for the purposes of delimitation*

135. The assumption in Mauritius' Memorial that it is permissible to carry out a maritime delimitation on the basis of base points located on Blenheim Reef appears to rely on the fact that a coastal State is in principle entitled to draw straight baselines which incorporate LTEs which are within 12 M of their coasts.<sup>227</sup> This assumption is wrong.

136. The case law makes clear that the possibility of a coastal State using an LTE within 12 M of its coast to define its baselines is a matter completely distinct from the selection of base points for the purposes of delimiting the EEZs or continental shelves of States with opposite or adjacent coasts. As held by the UNCLOS Tribunal in the *Bay of Bengal Arbitration*:

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

It does not necessarily follow, however, that low-tide elevations should be considered as appropriate base points for use by a court or tribunal in delimiting a maritime boundary between adjacent coastlines. Article 13 specifically deals with the measurement of the breadth of the territorial sea. It does not address the use of low-tide elevations in maritime delimitations between States with adjacent or opposite coasts.”<sup>228</sup>

137. The distinction drawn in that award is entirely consistent with the fact that base points for the purpose of identifying a provisional delimitation line must be “the most appropriate base points *on the relevant coasts* of the Parties”.<sup>229</sup> As has been explained above, there is no portion of the “relevant coast” on Blenheim Reef.

138. It is notable that Mauritius does not point to any specific authority in support of its placement of base points on an LTE. Indeed, as far as the Maldives is aware, there has not been *any* case in which a provisional equidistance line in respect of overlapping EEZ and continental shelf claims has been drawn by situating a base point on an LTE. To the contrary, international courts and tribunals have rejected this possibility *even* for delimitation of the territorial sea. A consideration of three key cases, *Qatar/Bahrain*, the *Bay of Bengal Arbitration* and *Somalia v. Kenya*, all of which explicitly rejected LTEs as locations for base points, is instructive in illustrating why Mauritius' placement of base points on Blenheim Reef should be similarly rejected.

139. In *Qatar/Bahrain*, the ICJ was required to decide whether or not to locate base points on a large feature called Fasht al Azm. This feature lies just 265 metres from Sitrah

<sup>227</sup> The Memorial cites UNCLOS Art. 13 at para. 2.20, and at para. 2.24 simply assumes that base points for the construction of the provisional equidistance line should be identified along the low water line of Blenheim Reef. Further, at para. 4.29 it states: “There are 13 base points on Mauritius' coast, ... [including] 4 on Blenheim Reef, a low-tide elevation within 12 M of Salomon Islands Atoll”.

<sup>228</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 260.

<sup>229</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 190, para. 135 (emphasis added).



Island, itself an island very close — indeed connected by a bridge — to the main island of Bahrain. Figure 23 below shows Fasht al Azm in green, lying east of Sitrah.

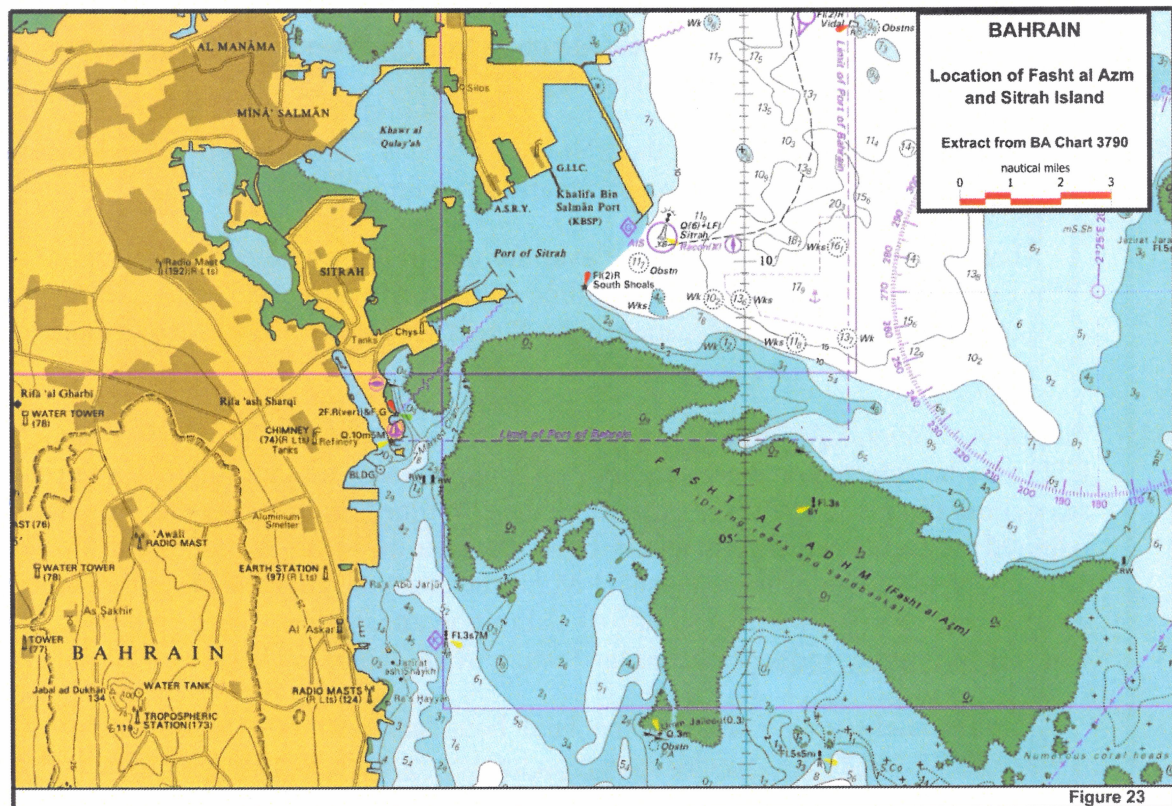


Figure 23

140. The Court decided as follows:

“If this feature were to be regarded as part of the island of Sitrah, the basepoints for the purposes of determining the equidistance line would be situated on Fasht al Azm’s eastern low-water line. *If it were not to be regarded as part of the island of Sitrah, Fasht al Azm could not provide such basepoints.*”<sup>230</sup>

141. Thus, for the Court, the LTE, on its own, was not capable of providing the location for base points for delimitation purposes. It was only if it was *part of an island* that the LTE could be the site of base points for the purposes of delimitation.

142. In the present case, it is clear that Blenheim Reef is not part of any island. Mauritius does not suggest that it is. To the contrary, although Mauritius at one point in its Memorial tries to depict Blenheim Reef as part of Salomon Islands Atoll,<sup>231</sup> elsewhere it correctly identifies Blenheim Reef as a *separate* feature from the nearest high-tide

<sup>230</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 104, para. 216 (emphasis added).

<sup>231</sup> The Memorial states at para. 4.26 that Mauritius’ relevant coast consists of “the entirety of Mauritius’ north-facing coast on Peros Banhos Atoll and Salomon Islands Atoll, *including Blenheim Reef*” (emphasis added).

feature — namely Île Takamaka, which forms part of the Salomon Islands Atoll.<sup>232</sup> The distance between Blenheim Reef and Île Takamaka is 10.58 M. Thus, consistent with the ruling of the ICJ as regards Fasht al Azm in the *Qatar/Bahrain* case (where the relevant distance to land territory was just 265 m but the LTE was still disregarded as a site for base points), Blenheim Reef is not part of any island and therefore cannot be the site of base points for delimitation purposes.

143. In the *Bay of Bengal* Arbitration, the UNCLOS Tribunal similarly refused to locate any base points on LTEs in the context of a maritime delimitation. It held that:

“base points located on low-tide elevations do not fit the criteria [for selection of appropriate base points for maritime delimitation purposes] elaborated by the International Court of Justice in the *Black Sea* case and confirmed in more recent cases.”<sup>233</sup>

144. The *Bay of Bengal* Arbitration suggests that the only situation in which a particular LTE may be selected as the location of base points even for carrying out a territorial sea delimitation is where it is “situated on the coastline”. In that case the Tribunal was required to decide whether it would be appropriate to locate a base point on South Talpatty/New Moore Island — just 1.1 M off the coast of India and partially within its internal waters — for the purposes of delimiting the parties’ territorial seas. In its Counter-Memorial, India presented the feature in the following way:

“Immediately to the west of the land boundary terminus, within India’s territorial sea, is the low-tide elevation known in India as New Moore Island (and in Bangladesh as South Talpatty Island). It lies approximately 1.1 nautical miles off the Indian coast, and 3.5 nautical miles from the nearest point on the coast of Bangladesh. The whole of New Moore Island lies west of the land boundary terminus. It is shown on sketch-map No. 2.2 at page 17, and on the recent satellite image of January 2012, found in figure No. 2.3 at page 19.”<sup>234</sup>

145. The figure illustrating the position of South Talpatty/New Moore Island produced in India’s Counter-Memorial<sup>235</sup> was the following (Figure 24 of the present Counter-Memorial):

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<sup>232</sup> Memorial of Mauritius, para. 2.20. See also para. 2.14, which indicates that Blenheim Reef is a distinct feature from the Salomon Islands Atoll.

<sup>233</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 261.

<sup>234</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Counter-Memorial of India, 13 July 2012, p. 14, para. 2.7.

<sup>235</sup> *Ibid.*, p. 15.



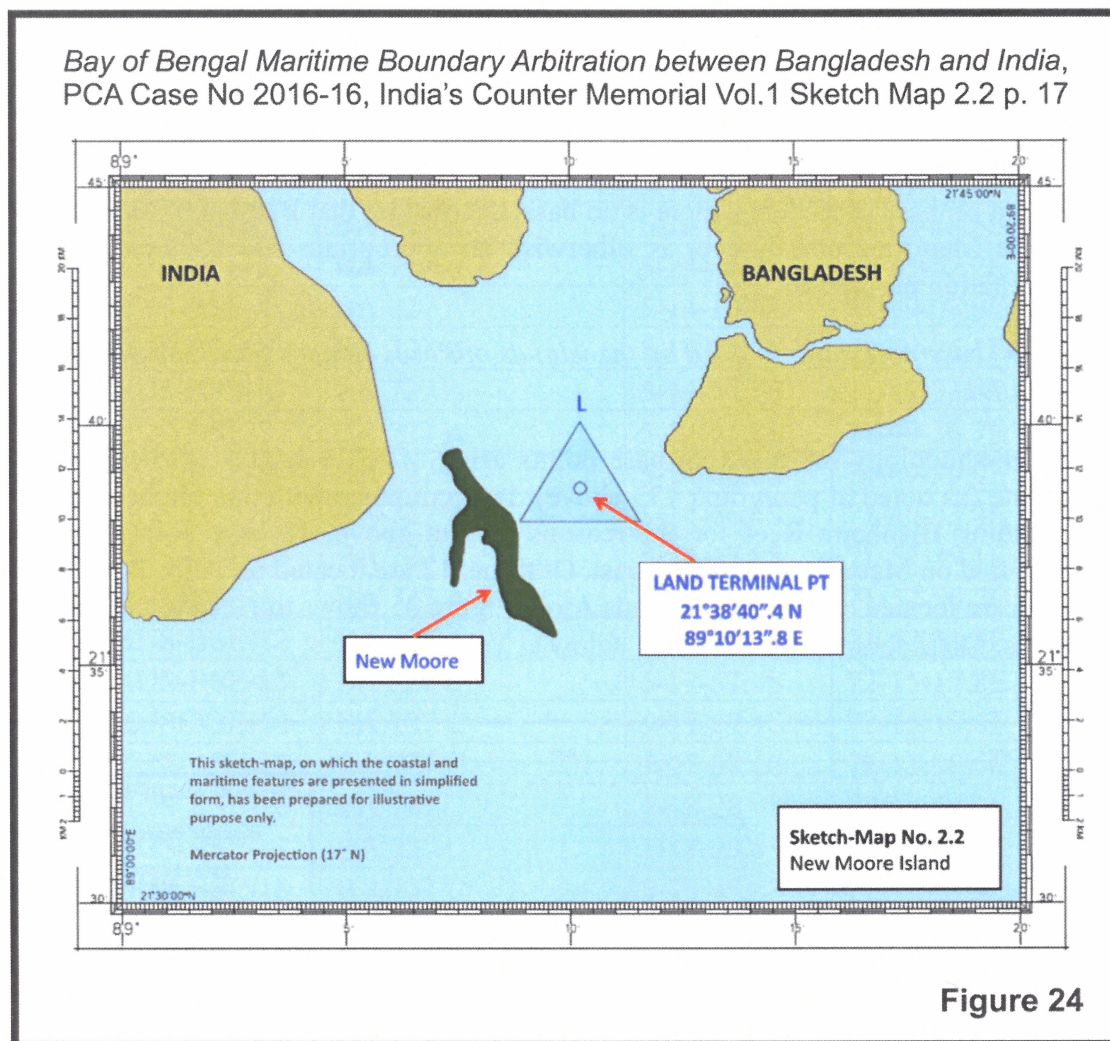


Figure 24

146. The Tribunal rejected India's contention, and considered that, irrespective of whether South Talpatty/New Moore Island was an LTE or permanently submerged, this feature "could in no way be considered as situated on the coastline".<sup>236</sup> Similarly, Blenheim Reef can in no way be considered as situated on the coastline of the Chagos Archipelago. Indeed, at 10.58 M Blenheim Reef is significantly further from the coastline of the Chagos Archipelago than South Talpatty/New Moore was from India's coast (approximately 1.1 M). In fact, the northern half of this feature was within the internal waters (and thus land territory) of India (i.e. it is north of the land terminus at the mouth of the river), and the entirety of it was within 12 M of India's coast. In contrast, only 14% of Blenheim Reef lies within 12 M of the nearest island (from which it is wholly disconnected as explained above).
147. Recently, in *Somalia v. Kenya*, the ICJ rejected the proposal to locate a base point on an LTE, considering it "appropriate to place base points for the construction of the median line solely on solid land on the mainland coasts of the Parties".<sup>237</sup> Having rejected certain "tiny maritime features"<sup>238</sup> (including an LTE) as sites for base points

<sup>236</sup> Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award, 7 July 2014, para. 263.

<sup>237</sup> Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment, 12 October 2021, para. 114.

<sup>238</sup> Ibid., para. 113.

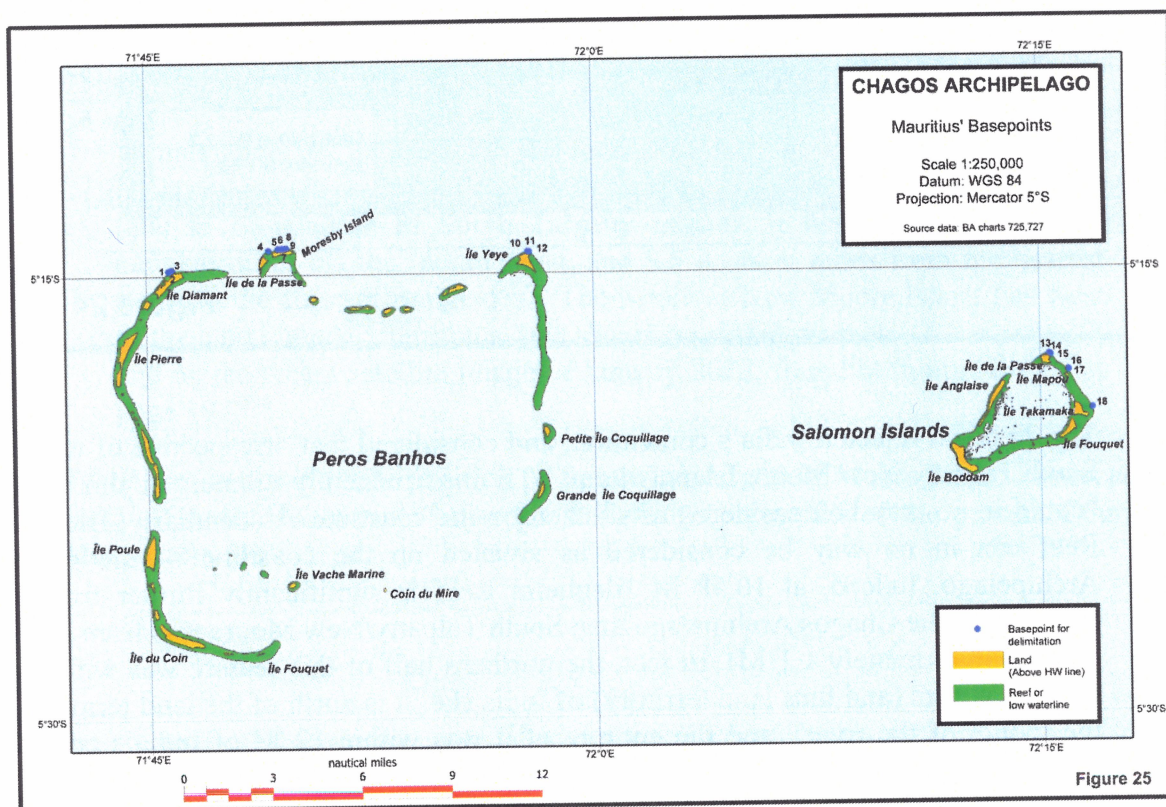


when addressing the delimitation of the territorial sea, the Court did not even mention these features for identifying base points for the delimitation of the EEZ and continental shelf.<sup>239</sup> Similarly, Blenheim Reef is not on solid land on the coast of the Chagos Archipelago, and it would be clearly inappropriate to locate a base point upon it.

148. In light of these precedents, there is no basis to consider that Blenheim Reef is situated on the Mauritius coastline or is otherwise an appropriate site for base points for delimitation purposes.

*b. Mauritius' base points are located on the islands of Peros Banhos Atoll and Salomon Islands Atoll*

149. The methodology for selecting base points using "CARIS-LOTS" software is not in dispute (as noted at paragraph 133 above). In accordance with this methodology, and excluding Blenheim Reef for the reasons set out above, 18 base points have been identified on Mauritius' relevant coast. Of these, 12 are located on Peros Banhos Atoll, and 6 are located on Salomon Islands Atoll. Figure 25 shows the location of these base points. Their coordinates are listed below at Table 2.



<sup>239</sup> *Ibid.*, para. 146.



TABLE 2

Mauritius Base Points			
Base Point	BA Chart Number	Latitude	Longitude
MUS-BSE-1	BA 727 A	5-14-51.0S	71-45-44.8E
MUS-BSE-2	BA 727 A	5-14-49.1S	71-45-48.6E
MUS-BSE-3	BA 727 A	5-14-48.2S	71-45-52.2E
MUS-BSE-4	BA 727 A	5-14-10.4S	71-49-07.0E
MUS-BSE-5	BA 727 A	5-14-07.7S	71-49-26.1E
MUS-BSE-6	BA 727 A	5-14-07.1S	71-49-33.4E
MUS-BSE-7	BA 727 A	5-14-06.8S	71-49-36.7E
MUS-BSE-8	BA 727 A	5-14-06.6S	71-49-39.9E
MUS-BSE-9	BA 727 A	5-14-06.4S	71-49-43.4E
MUS-BSE-10	BA 727 A	5-14-17.8S	71-57-49.1E
MUS-BSE-11	BA 727 A	5-14-17.9S	71-57-50.7E
MUS-BSE-12	BA 727 A	5-14-18.0S	71-57-51.5E
MUS-BSE-13	BA 727 C	5-17-57.4S	72-15-17.8E
MUS-BSE-14	BA 727 C	5-17-57.9S	72-15-19.6E
MUS-BSE-15	BA 727 C	5-17-58.6S	72-15-20.6E
MUS-BSE-16	BA 727 C	5-18-28.9S	72-15-56.2E
MUS-BSE-17	BA 727 C	5-18-29.5S	72-15-56.6E
MUS-BSE-18	BA 727 C	5-19-45.8S	72-16-44.4E

## C. The provisional equidistance line

150. Once the base points are selected, the drawing of the provisional equidistance/median line is a purely geometrical exercise. Based on the base points identified above, this line is depicted in Figure 26 below, and the coordinates appear at Table 3.

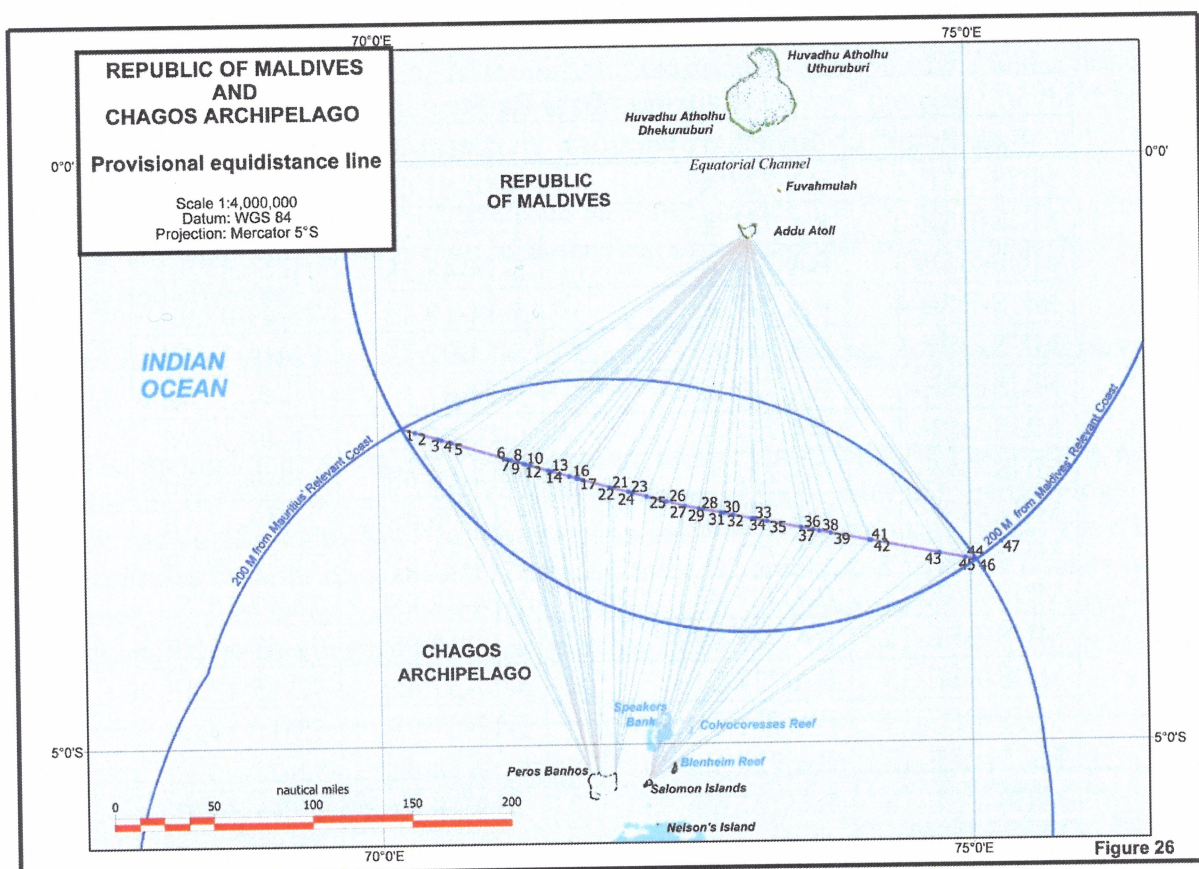


TABLE 3

The Maldives' Proposed Provisional Equidistance Line		
Point	Latitude	Longitude
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-51.5S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E

18	02-43-54.4S	071-40-48.6E
19	02-44-00.9S	071-41-10.9E
20	02-44-39.2S	071-43-20.8E
21	02-48-42.8S	071-57-08.7E
22	02-49-08.1S	071-58-44.4E
23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E
29	03-00-34.7S	072-44-17.0E
30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E
40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E
43	03-24-17.3S	074-44-21.3E
44	03-26-50.3S	074-57-21.9E
45	03-27-41.7S	075-01-40.6E
46	03-27-59.9S	075-03-12.2E

## II. Relevant circumstances

151. The Maldives does not consider that there are any relevant circumstances justifying a departure from the equidistance line it has set out above. Mauritius has stated correctly that most relevant circumstances which justify an adjustment of a provisional equidistance line are of a geographic nature,<sup>240</sup> although other circumstances (such as those related to fisheries) may also be relevant.<sup>241</sup> Mauritius has further confirmed that in the present case there are no circumstances that would necessitate an adjustment of the provisional equidistance line that it has constructed.<sup>242</sup> The provisional equidistance

<sup>240</sup> Memorial of Mauritius, para. 4.33.

<sup>241</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, ICJ Reports 1993, p. 38 at pp. 71–72, paras. 75–76.

<sup>242</sup> Memorial of Mauritius, para. 4.35.

line constructed by the Maldives does not create any such circumstances either and therefore no adjustment is necessary.

152. It is noted, however, that if, contrary to the Maldives' position in respect of Blenheim Reef, Mauritius' provisional equidistance line were to be accepted, then there would be relevant circumstances requiring an adjustment. As set out in the jurisprudence, relevant circumstances include a situation where a small feature has a disproportionate effect on the location of the provisional line.<sup>243</sup> The recent judgment in *Somalia v. Kenya* would suggest that, at the *first* stage of the methodology, base points should not be placed on tiny maritime features (including LTEs and even islands) where to do so would have "an effect on the course of the median line that is disproportionate to [the features'] size and significance to the overall coastal geography";<sup>244</sup> to the extent that such disproportionate effect is not taken account of in the first stage, it must instead be a relevant circumstance necessitating adjustment of the equidistance line at the second stage. The provisional delimitation line proposed by Mauritius is determined largely by base points it has located on Blenheim Reef, a feature far less significant than an island since it is an LTE, not forming part of and wholly disconnected from Mauritius' terrestrial territory. The base points Mauritius has placed on Blenheim Reef control more than half of the provisional equidistance line it has put forward, generating 30 out of the 52 "equidistant" points on the provisional equidistance line. It results in Mauritius being granted an additional 4,690 km<sup>2</sup> of maritime area compared to what it would be granted if Blenheim Reef were discounted.<sup>245</sup> This would attribute to Blenheim Reef an extraordinarily disproportionate effect. Accordingly, even if base points were to be located on Blenheim Reef in disregard of the jurisprudence, the resulting provisional equidistance line would have to be adjusted southwards to address its disproportionate effect.

### III. No disproportionality

153. The question to be addressed at the third stage is whether the provisional line "lead[s] to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line".<sup>246</sup> According to the ICJ, an adjustment to the delimitation line will be necessary on this basis only if there is "great

<sup>243</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, ICJ Reports 1985, p. 13 at p. 48, para. 64; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at pp. 104–109, paras. 219–220; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 122, para. 185; *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 316–319; *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports 1969, p. 3 at pp. 36–37, para. 57. Some of this case law is cited in Memorial of Mauritius, para. 4.34, footnote 113, but it does not support the qualification in the body of the Memorial (para. 4.34) that the presence of small islands is considered a "relevant circumstance" only if the islands belong to one party but are "directly in front of the coast of the other party".

<sup>244</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 113.  
<sup>245</sup> Memorial of Mauritius, Figure 4.6.

<sup>246</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 103, para. 122; *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 533.



disproportionality”,<sup>247</sup> “significant disproportionality”,<sup>248</sup> or a “disproportion so gross as to ‘taint’ the result and render it inequitable”.<sup>249</sup>

154. The disproportionality test necessitates a determination of, first, the length of the Parties’ relevant coasts, and, secondly, the proportion of the relevant area granted to each Party following the first and second stages of the analysis set out above.
155. The length of the relevant coasts has already been calculated above as follows: Mauritius’ relevant coast is 39.9 km and the Maldives’ relevant coast is 39.2 km.<sup>250</sup> The ratio is just 1.02:1 in favour of Mauritius.
156. The relevant area is the area resulting from the projection of the relevant coasts of the Parties up to a distance of 200 M.<sup>251</sup> The relevant area in this case (which is shown in Figure 27 below) is 86,319 km<sup>2</sup>.
157. The delimitation line contended for by the Maldives allocates to Mauritius 43,699 km<sup>2</sup> and to the Maldives 42,620 km<sup>2</sup> (as shown in Figure 27 below). The ratio of maritime areas is 1.03:1 in favour of Mauritius, which is virtually identical to the coastal ratio of 1.02:1 indicated above. There is clearly no marked disproportion between this ratio and the ratio of the respective coastal lengths.

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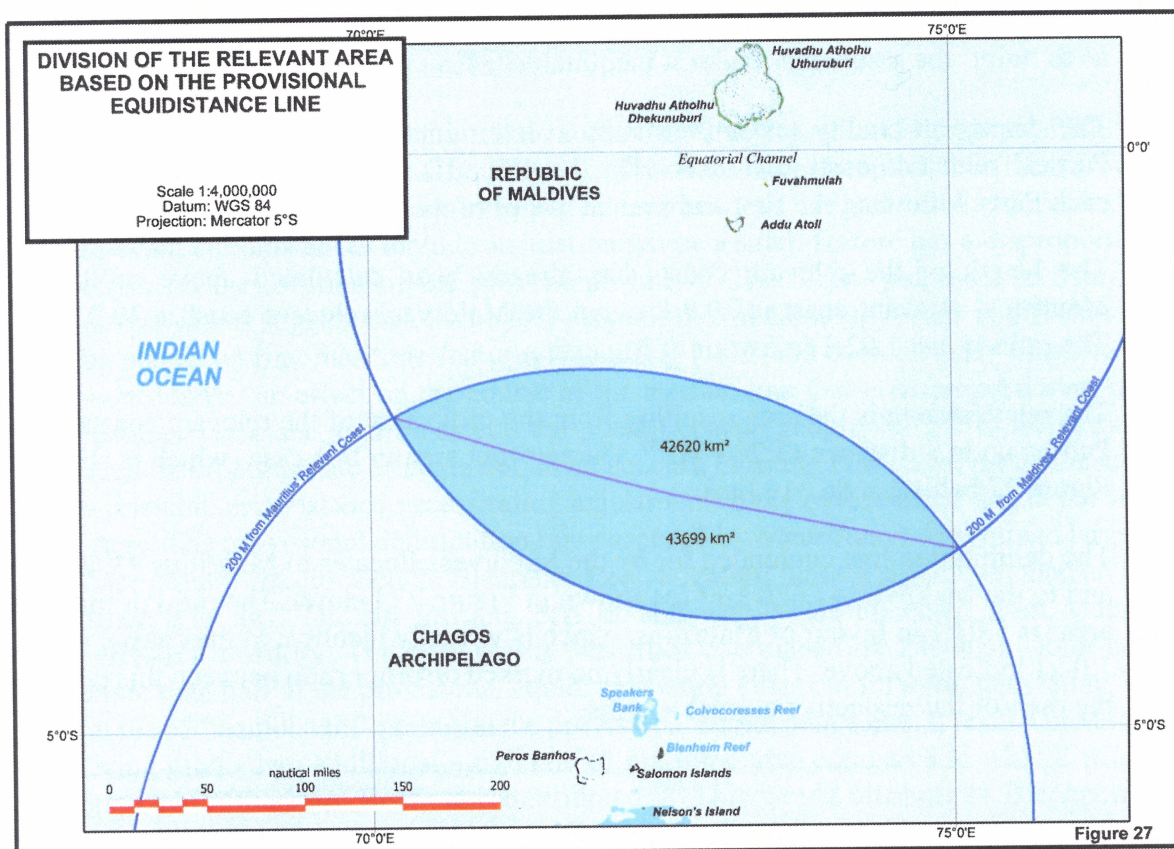
<sup>247</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 103, para. 122.

<sup>248</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 715, para. 240.

<sup>249</sup> *Ibid.*, p. 716, para. 242.

<sup>250</sup> See, paras. 125, 130 above.

<sup>251</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, PCA Case No. 2010-16, Award, 7 July 2014, para. 306 “Having identified what it considers to be the relevant coasts of the Parties, it remains for the Tribunal only to identify the area resulting from the projections of those coasts”; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, 19 November 2012, para. 157 (“Depending on the configuration of the relevant coasts in the general geographical context, the relevant area may include certain maritime spaces and exclude others which are not germane to the case in hand”).



158. The same conclusion would be reached if the ‘relevant area’ were taken as being that alleged by Mauritius, which is calculated on the erroneous basis that Blenheim Reef generates projections for delimitation purposes. Mauritius contends that the relevant area covers 95,830 km<sup>2</sup>.<sup>252</sup> If this were the ‘relevant area’, the provisional equidistance line constructed by the Maldives would allocate to Mauritius 52,096 km<sup>2</sup> and to the Maldives 43,734 km<sup>2</sup>. The ratio in that scenario would be 1.19:1 in favour of Mauritius. Again, there would be no marked disproportion between this ratio and the ratio of the respective coastal lengths.<sup>253</sup>

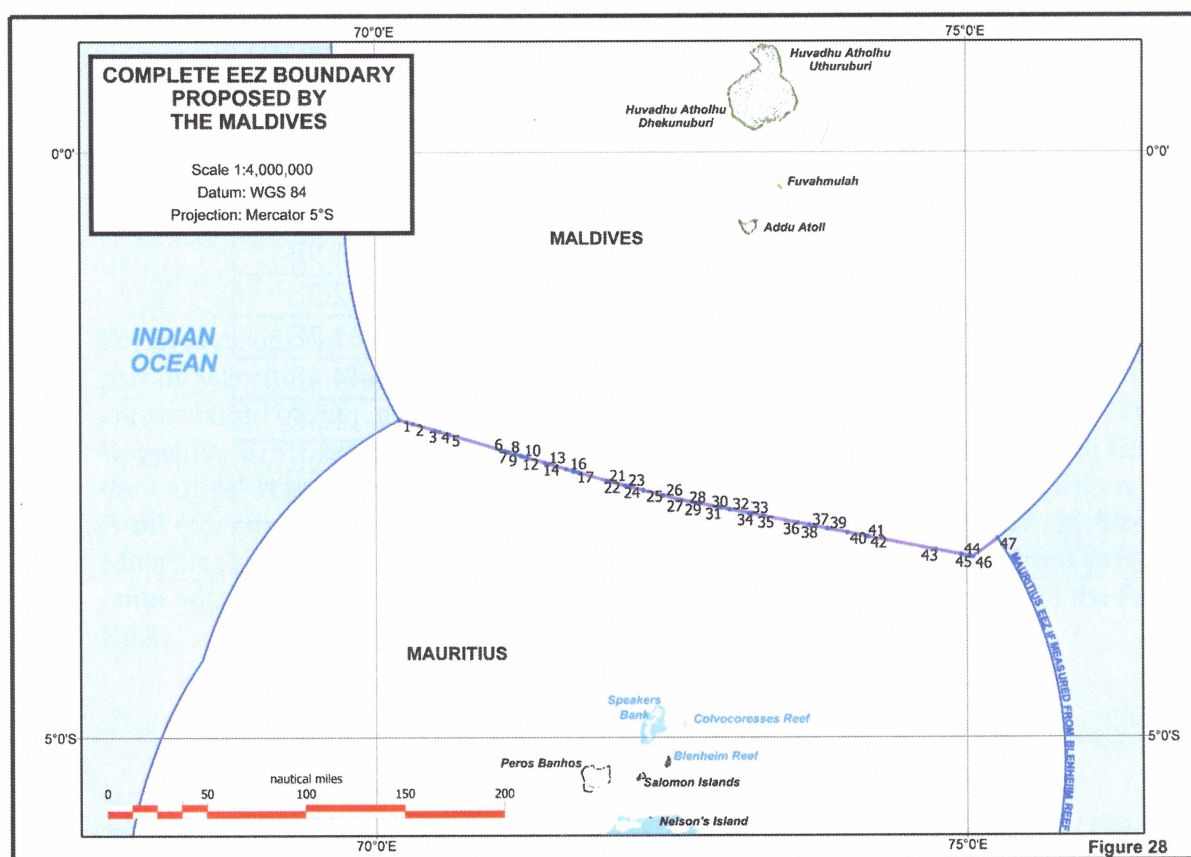
<sup>252</sup> It is noted that Mauritius refers to an area of 95,600 km<sup>2</sup> in its Memorial: Figures 4.7, 4.8. As set out above (see footnote 107), the Maldives understands that Mauritius’ change in position since the Preliminary Objections phase concerning the alleged area of overlap is due to the fact that, during the Preliminary Objections phase, Mauritius used incorrect coordinates for the northern part of Blenheim Reef.

<sup>253</sup> Cf. for example, in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 716–717, paras. 243–247, even a ratio of 1:8.2 in favour of Nicaragua in regard to coastal lengths, and only 1:3.44 in favour of Nicaragua in regard to the relevant area, was not a significant enough disproportionality to justify an adjustment to the delimitation line (as noted in Memorial of Mauritius, para. 4.46). In *Somalia v. Kenya*, noting that the ratio of the relevant coasts is 1:1.43 in favour of Somalia, the Court accepted that a ratio between the maritime zones that would appertain respectively to Kenya and Somalia of 1:1.30 in favour of Kenya “does not reveal any significant or marked disproportionality”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 176.



#### IV. The maritime boundary

159. The maritime boundary between the Parties' EEZs and continental shelves within 200 M constructed by the Maldives is the equidistance line depicted in Figure 28 below. It consists of a series of geodesic lines connecting all points from 1 in the west of the area to point 46 in the east. The Maldives submits that this is the correct boundary to be drawn by the Special Chamber in this case.
160. Beyond point 46, the Maldives invites the Special Chamber to delimit a further portion of the boundary in respect of the Parties' claimed EEZs (although, for the reasons set out in paragraph 161 and Chapter 5 below, this line does not delimit the Parties' continental shelves). It is noted that Mauritius measures the breadth of its EEZ from the baselines used for its territorial sea, including with reference to Blenheim Reef, on which basis Mauritius claims an EEZ that ends at point 47 marked on Figure 28 below. Beyond point 46, the Maldives has no claim to an EEZ and there are therefore no overlapping EEZ claims of the Parties in the area to the east of point 46. Accordingly, to the extent that Mauritius is entitled to an EEZ between point 46 (the end of the equidistance line) and point 47, the boundary runs along the outer limit of the Maldives' EEZ, as marked in Figure 28 below.<sup>254</sup>



<sup>254</sup>

For the avoidance of doubt, this does not render Blenheim Reef part of the relevant coast or an appropriate site for base points in respect of the three-stage methodology. It is merely a recognition that in the area beyond the Maldives' 200 M EEZ limit there are no overlapping EEZ claims.

161. The Maldives notes that, to the southeast of the delimitation line between points 46 and 47, there is a divergence between the boundary of the Parties' EEZs on the one hand and their continental shelves on the other. This is because, in this maritime area, the Maldives claims a continental shelf *beyond* 200 M that overlaps with the claims of Mauritius to a continental shelf *within* 200 M. Delimitation of the continental shelf in these maritime areas is addressed in Chapter 5 below.
162. On this basis, the points of the Maldives' proposed boundary line are listed below in Table 4. The Maldives respectfully invites the Special Chamber to delimit the boundary between the Parties according to these coordinates.

TABLE 4

<b>The Maldives' Proposed Boundary Line</b>		
<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
The delimitation of the Parties' EEZs and continental shelves within 200 M		
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-51.5S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E
18	02-43-54.4S	071-40-48.6E
19	02-44-00.9S	071-41-10.9E
20	02-44-39.2S	071-43-20.8E
21	02-48-42.8S	071-57-08.7E
22	02-49-08.1S	071-58-44.4E
23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E



29	03-00-34.7S	072-44-17.0E
30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E
40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E
43	03-24-17.3S	074-44-21.3E
44	03-26-50.3S	074-57-21.9E
45	03-27-41.7S	075-01-40.6E
46	03-27-59.9S	075-03-12.2E
The delimitation of the Parties' EEZs would then follow the 200 M EEZ limit of the Maldives from point 46 to point 47 as mentioned below		
47	03-18-40.1S	075-15-43.2E

## V. Conclusion

163. For the reasons set out above, the Maldives submits that Blenheim Reef does not form part of Mauritius' "relevant coast" and is not an appropriate site for base points for the construction of the equidistance line. Rather, the boundary between the Parties' respective EEZs and continental shelves within 200 M is the equidistance line between the Parties' respective coasts, constructed from relevant base points located on Addu Atoll (for the Maldives) and on Peros Banhos Atoll and Salomon Islands Atoll (for Mauritius). This boundary line is described above, at paragraph 159 from point 1 to point 46, and at paragraph 160 from point 46 to point 47 solely in respect of the Parties' EEZs.

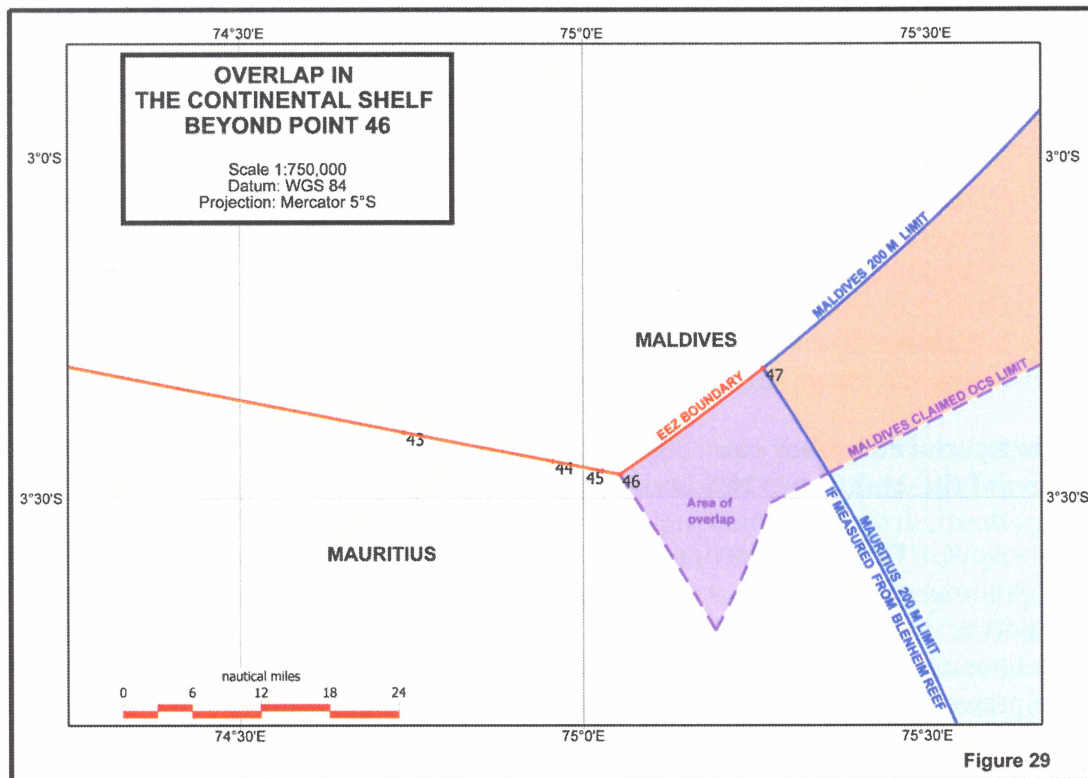
## CHAPTER 5: REMAINING DELIMITATION OF THE PARTIES' CONTINENTAL SHELVES

164. In Chapter 4, the Maldives has addressed the dispute between the Parties concerning the delimitation of the Parties' EEZs and continental shelves within 200 M. The Maldives has identified the boundary resulting from the proper application of the three-stage methodology.
165. However, as mentioned in Chapter 4, while the final segment of the boundary of the Parties' EEZs runs from point 46 to 47 along the 200 M limit of the Maldives' EEZ in a north-easterly direction (insofar as Mauritius includes Blenheim Reef as a basepoint in measuring the breadth of its EEZ),<sup>255</sup> this line does not settle the overlap between the Parties' continental shelves. In particular, the maritime dispute over which the Special Chamber has accepted jurisdiction extends to another area of the continental shelf, directly east of point 46.
166. As set out in Chapter 4, Mauritius claims an EEZ in the area southeast of the delimitation line between points 46 and 47 (noting the Maldives' position that the baselines on which that portion of Mauritius' claim is based do not yield base points for the purposes of construction of the equidistance line). As set out above, the Maldives notes that in the area where a State is entitled to an EEZ, that State also has an entitlement to a continental shelf.<sup>256</sup>
167. It may be recalled that the OCS entitlement claimed by the Maldives in its 2010 CLCS submission overlaps with the EEZ (and hence continental shelf within 200 M) claimed by Mauritius in this area. The location of the relevant overlap, relative to the EEZ boundary addressed in Chapter 4 above, is illustrated in Figure 29 below.

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<sup>255</sup> See Chapter 4, para. 160 above.

<sup>256</sup> See Chapter 4, para. 111 above; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, ICJ Reports 1985, p. 13 at p. 33, para. 34.



168. It follows that what characterises the dispute addressed in this Chapter is overlapping claims to continental shelf rights: on the part of the Maldives, its OCS entitlement, and, on the part of Mauritius, its entitlement to a continental shelf within 200 M from its baselines.
169. A similar situation was addressed by ITLOS in *Bangladesh/Myanmar*, where the Tribunal noted that:
- “the boundary delimiting the area beyond 200 nm from Bangladesh but within 200 nm of Myanmar is a boundary delimiting the continental shelves of the Parties, since in this area only their continental shelves overlap. There is no question of delimiting the exclusive economic zones of the Parties as there is no overlap of those zones.”<sup>257</sup>
170. Accordingly, what the Special Chamber is requested to determine with respect to this particular aspect of the dispute is the delimitation between the Parties’ respective continental shelves in the area of overlapping entitlements.
171. This Chapter addresses the following matters:
- (a) **Section I** confirms that the Special Chamber is able to undertake a delimitation of these maritime zones, in the form of constructing a directional equidistance line. This is because the Maldives’ entitlement to a continental shelf extending

<sup>257</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 471. See also *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 503.

beyond 200 M has been set out in its (timely) submission to the CLCS, such entitlement is agreed between the Parties, and the delimitation of the area addressed in this Chapter is not predicated on a particular *delineation* of the Maldives' OCS following CLCS recommendations. The Maldives does not consider that these matters will be controversial as it is Mauritius which has invited the Special Chamber to carry out the delimitation with respect to the overlap between its EEZ (and hence its continental shelf within 200 M) and the Maldives' OCS entitlement.

- (b) **Section II** sets out the directional line of delimitation resulting from a proper application of the three-stage methodology in respect of the continental shelf.

**I. The Special Chamber can exercise its jurisdiction to carry out the delimitation in respect of the Maldives' OCS and Mauritius' continental shelf beyond point 46**

172. As set out in Chapter 2, Section I above, the Special Chamber identified in its Judgment on Preliminary Objections the existence of a dispute regarding the overlap between the Maldives' claimed OCS entitlement and Mauritius' EEZ (and necessarily therefore its continental shelf within 200 M). Accordingly, the delimitation which is the subject of the present Chapter is within the Special Chamber's jurisdiction.
173. As set out in Chapter 2, Section II(B) above, in certain circumstances an international court or tribunal is able to exercise jurisdiction to carry out a delimitation in respect of a claimed OCS entitlement that has not yet been the subject of CLCS recommendations as to delineation.<sup>258</sup> That is the case with respect to the *Maldives'* entitlement to an OCS for the three reasons set out below, and therefore the Special Chamber can exercise its jurisdiction in that regard. Indeed, this position is common ground between the Parties; it is Mauritius that has requested the delimitation of (*inter alia*) the Maldives' OCS entitlement, and Mauritius therefore clearly considers this request both to fall within the Special Chamber's jurisdiction and to be admissible.
174. First, as noted in Chapter 2, a State claiming that its entitlement to a continental shelf extends beyond 200 M must have filed a full submission to the CLCS, pursuant to the rules established by UNCLOS (see the relevant terms of UNCLOS and case law set out in Chapter 2, Section II(B) above<sup>259</sup>). The Maldives filed its full submission with the CLCS in 2010 in accordance with its obligations under UNCLOS Article 76 and within the time limits fixed by Article 4 of Annex II.<sup>260</sup> This is recognised by Mauritius in its Memorial.<sup>261</sup>
175. Secondly, where a State has made a full CLCS submission in respect of the OCS entitlement it claims, international courts and tribunals have routinely taken agreement between the parties as to the existence of the said entitlement to an OCS as sufficient

<sup>258</sup> See Chapter 2, para. 66 above, citing *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 410; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 137, paras. 112–113.

<sup>259</sup> See Chapter 2, paras. 69–74 above.

<sup>260</sup> See Chapter 1, para. 31 above.

<sup>261</sup> Memorial of Mauritius, paras. 2.46–2.48.



to establish that such entitlement exists.<sup>262</sup> Here Mauritius has expressly and unambiguously confirmed its agreement as to the existence of the Maldives' entitlement to an OCS in the area of overlap with its EEZ.<sup>263</sup> It may be recalled that Mauritius protested against the Maldives' CLCS submission in 2010 only "in as much as the Extended Continental Shelf being claimed by the Republic of Maldives encroaches on the Exclusive Economic Zone of the Republic of Mauritius".<sup>264</sup> It has never challenged the existence of the Maldives' OCS entitlement.

176. For the avoidance of doubt, and as elaborated in Chapter 2, Section II(B), it does *not* follow from the above that the Maldives agrees that Mauritius has a similar entitlement to an OCS, and Mauritius is wrong to allege that any such agreement can be implied.<sup>265</sup>
177. Finally, the jurisprudence has consistently confirmed that an international court or tribunal may exercise jurisdiction to carry out a delimitation in respect of an OCS claim provided that doing so will neither require nor prejudice a future delineation based on CLCS recommendations (see Chapter 2, Section II(B) above<sup>266</sup>). In particular, the drawing of directional lines has been the typical methodology employed by international courts and tribunals in cases where the outer limits of an OCS entitlement have yet to be delineated. As shown below, the boundary between the OCS claimed by the Maldives and Mauritius' continental shelf within 200 M can be drawn by continuing the equidistance line until the point of intersection with the outer limits of the Maldives' OCS (the precise coordinates of which are to be determined at a later stage on the basis of a recommendation of the CLCS).

## **II. The delimitation of the Maldives' OCS and Mauritius' continental shelf beyond point 46**

178. The correct approach to delimitation of the Parties' continental shelves beyond point 46 is to utilise the same three-stage methodology that the Parties agree, consistent with settled jurisprudence, is applicable between points 1 and 46.
179. In particular it is immaterial that the delimitation in question involves a claim (by the Maldives) to an OCS entitlement, rather than to a continental shelf within 200 M. This is consistent with the fact that the continental shelf comprises "the submerged

<sup>262</sup> See Chapter 2, para. 80 above citing *Dispute concerning 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>263</sup> Memorial of Mauritius, paras. 4.61, 4.64. See Figure 29 above.

<sup>264</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 (**Annex 59**). See also Memorial of Mauritius, para. 3.16.

<sup>265</sup> See e.g., Memorial of Mauritius, para. 2.31.

<sup>266</sup> See Chapter 2, paras. 87–88 above. See e.g. *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 379, 394; *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, p. 139 at p. 192, para. 144 and pp. 197–198, para. 157.

prolongation of the land mass of the coastal State”,<sup>267</sup> whether within or beyond 200 M. The relevant jurisprudence establishes that:

“there is in law only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf”.<sup>268</sup>

180. In respect of the application of the three-stage methodology, there is no difference between delimitation involving only continental shelf entitlements within 200 M and delimitation involving one or more claimed OCS entitlements. This is reflected in the judgment in *Bangladesh/Myanmar*, in which the tribunal stated:

“454. The Tribunal notes that article 83 of the Convention addresses the delimitation of the continental shelf between States with opposite or adjacent coasts without any limitation as to area. It contains no reference to the limits set forth in article 76, paragraph 1, of the Convention. Article 83 applies equally to the delimitation of the continental shelf both within and beyond 200 nm.

455. In the view of the Tribunal, the delimitation method to be employed in the present case for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm. Accordingly, the equidistance/relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200 nm. This method is rooted in the recognition that sovereignty over the land territory is the basis for the sovereign rights and jurisdiction of the coastal State with respect to both the exclusive economic zone and the continental shelf.”<sup>269</sup>

181. Similar statements were made in the *Bay of Bengal* arbitration<sup>270</sup> and in *Ghana/Côte d’Ivoire*.<sup>271</sup>

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<sup>267</sup> UNCLOS Article 76(3).

<sup>268</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 213; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 77, 404. Indeed, this point is described by Mauritius as “axiomatic”: Memorial of Mauritius, para. 4.67.

<sup>269</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 454–455 (para. 454 of which is quoted in Memorial of Mauritius, para. 4.67).

<sup>270</sup> *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 404 (“The Tribunal proceeds from the position that there is only a single continental shelf and it is, therefore, inappropriate to make a distinction between the continental shelf within and beyond 200 nm”), para. 465 (“The Tribunal considers that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 nm. Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 nm, the Tribunal will use the same method to delimit the continental shelf beyond 200 nm”).

<sup>271</sup> In this case, ITLOS stated that “there is only one single continental shelf” and that it was “[t]herefore ... considered inappropriate to make a distinction between the continental shelf within and beyond 200 nm as far as the delimitation methodology is concerned”, and the Tribunal accordingly applied the “internationally established [three-stage] approach” to the continental shelf both within and beyond 200 M: *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, paras. 360, 526–527. Similarly, in *Somalia v. Kenya*, consistent with the submission of Somalia that “the legal principles applicable to delimitation of the continental shelf beyond 200 nautical miles are the same as those applicable to

182. Mauritius has suggested that “there is a fundamental difference between delimitation within and beyond 200 M”.<sup>272</sup> This is plainly not the case.
183. Mauritius further suggests that there is some significance in the present case being a situation of opposite (rather than adjacent) coasts.<sup>273</sup> But this is similarly misconceived. As noted by the ICJ, “[t]he application of [the equidistance] method to delimitations between opposite coasts produces, in most geographical circumstances, an equitable result”, just as with States with adjacent coasts.<sup>274</sup> The Tribunal in the *Barbados/Trinidad and Tobago* arbitration confirmed that:

“Articles 74 and 83 do not distinguish between opposite and adjacent coasts. It follows that there is no justification to approach the process of delimitation from the perspective of a distinction between opposite and adjacent coasts and apply different criteria to each.”<sup>275</sup>
184. Thus, the methodology that Mauritius readily accepts applies to the delimitation in respect of the Parties’ EEZs and continental shelves within 200 M<sup>276</sup> — namely, the three-stage methodology — also applies in the additional area of overlap of continental shelves as defined in this Chapter.
185. As for the first stage of the methodology, since the base points are the same as those used for constructing the equidistance line within 200 M,<sup>277</sup> the provisional delimitation line between the respective continental shelves east of point 46 should simply continue to the east of the equidistance line already drawn. Specifically, the equidistance line continues from point 46 to the point of intersection with the outer limits of the Maldives’ OCS (the precise coordinates of which are to be determined in the future on the basis of a recommendation of the CLCS). This is shown on Figure 30 below.

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delimitation within 200 nautical miles”, the Court applied the three-stage approach to the continental shelf both within and beyond 200 M, concluding that “the maritime boundary beyond 200 nautical miles continues along the same geodetic line as the adjusted line within 200 nautical miles until it reaches the outer limits of the Parties’ continental shelves which are to be delineated by Somalia and Kenya, respectively, on the basis of the recommendations to be made by the Commission or until it reaches the area where the rights of third States may be affected”: *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 182, 196.

<sup>272</sup> Memorial of Mauritius, para. 4.72.

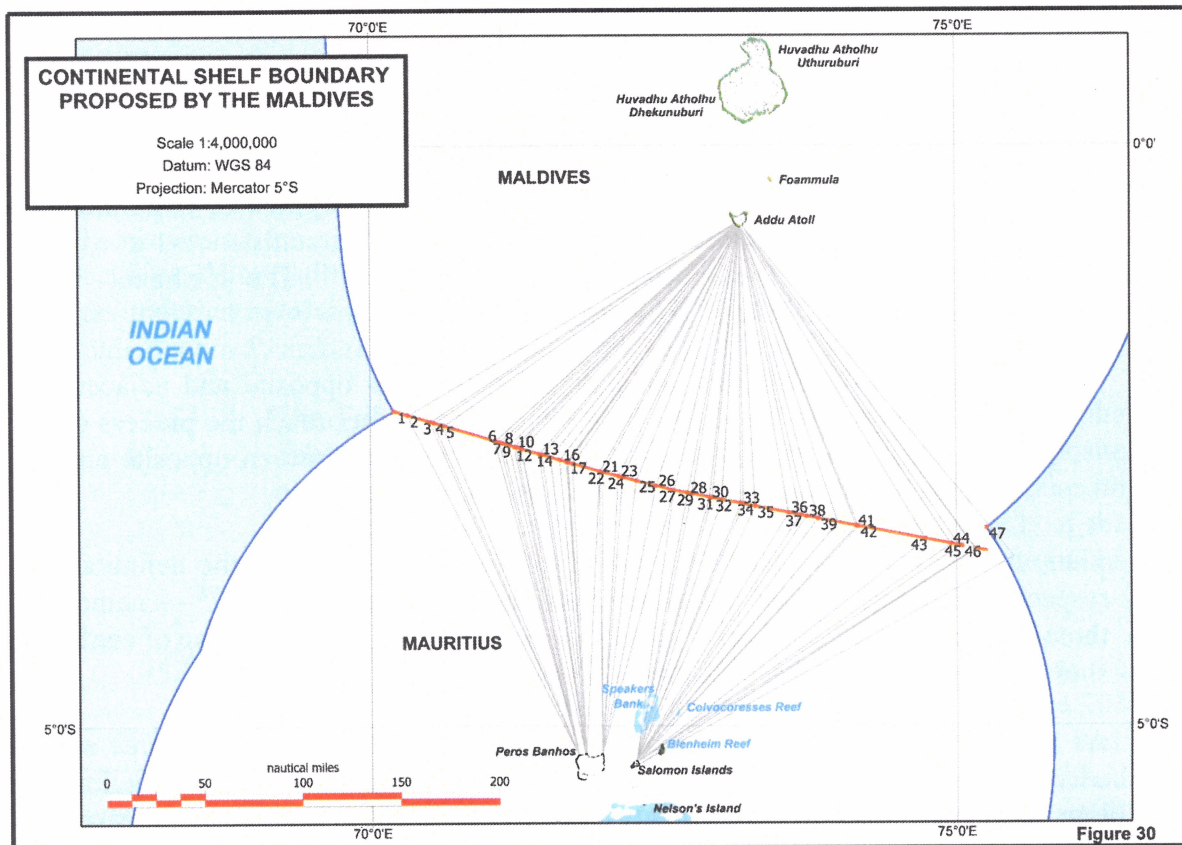
<sup>273</sup> *Ibid.*, paras. 4.69–4.70.

<sup>274</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, ICJ Reports 1993, p. 38 at p. 67, para. 65.

<sup>275</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 315. It went on to observe that “the distinction between opposite and adjacent coasts, while relevant in limited geographical circumstances, has no weight where the delimitation is concerned with vast ocean areas”: *ibid.*, para. 316.

<sup>276</sup> Memorial of Mauritius, paras. 4.13–4.18.

<sup>277</sup> Blenheim Reef remains an inappropriate site for base points for constructing the equidistance line.



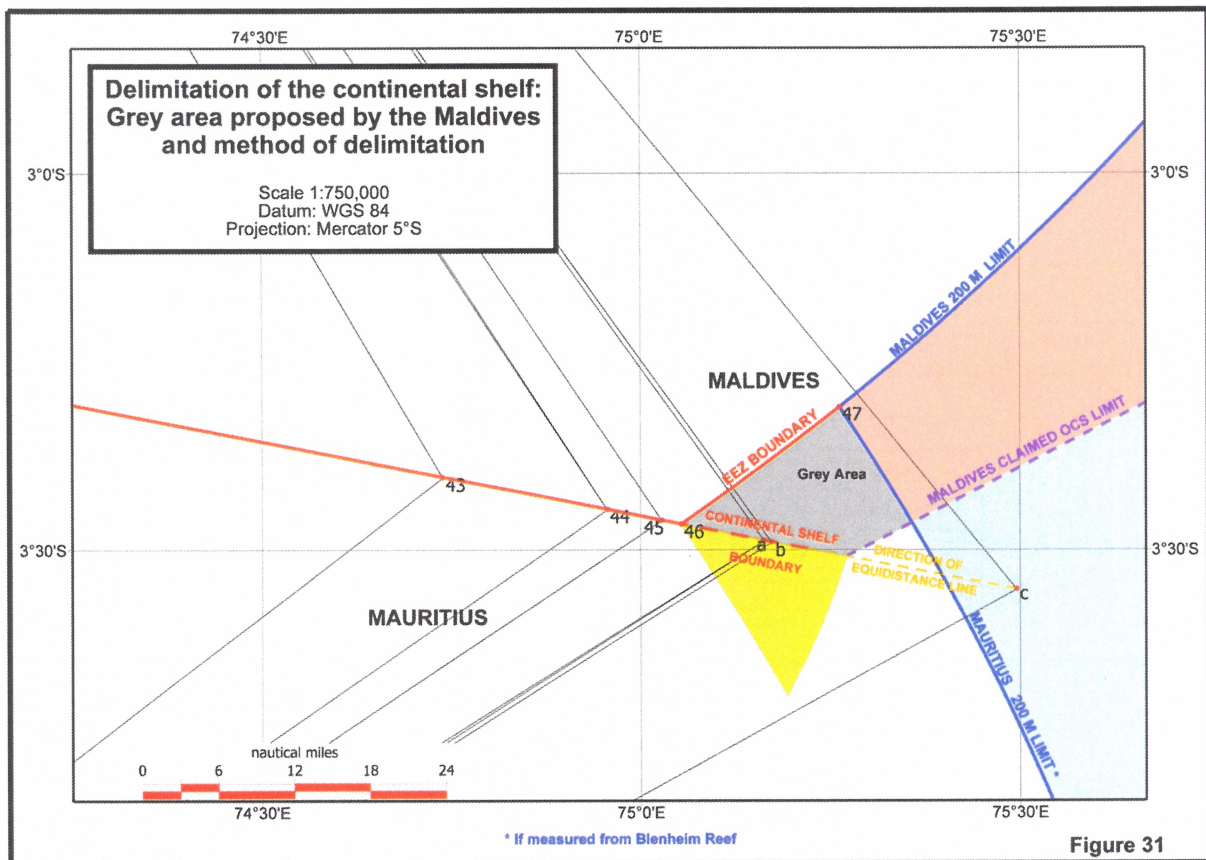
186. As for the second stage of the methodology, there are no relevant circumstances requiring any adjustment to the equidistance line (as is the case in relation to delimitation of the Parties' EEZs).
187. Finally, in so far as the disproportionality test is concerned, the total area of overlap between the Parties' respective entitlements to a continental shelf is 96,198 km<sup>2</sup>, with the area granted to the Maldives being 47,778 km<sup>2</sup> and to Mauritius 48,420 km<sup>2</sup>. The ratio would be 1.01:1 in favour of Mauritius, which does not show any marked disproportion in light of the virtually identical coastal ratio of 1.02:1 (in favour of Mauritius) set out in Chapter 4.<sup>278</sup>
188. As indicated in Figure 31 below, the delimitation east of point 46 generates what is commonly called a 'grey area', namely an area where, on the one hand, the Maldives has continental shelf rights over the seabed and subsoil and, on the other hand, Mauritius has the rights attaching to an EEZ. As was made clear by ITLOS in *Bangladesh/Myanmar*, "[t]he grey area arises as a consequence of delimitation",<sup>279</sup> and is no reason not to proceed with the delimitation.
189. The equidistance line in respect of the grey area has been constructed according to the same methodology as the equidistance line between points 1 and 46. Specifically, it is

<sup>278</sup> See para. 155 above.

<sup>279</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 472.



to consist of a series of geodesic lines connecting three points which are equidistant from the Parties' respective base points, as shown in Figure 31 below.



190. The coordinates according to which this equidistance line are to be constructed are shown in Table 5 below.

TABLE 5

The Points for Construction of the Equidistance Line beyond Point 46		
Point	Latitude	Longitude
a	03-29-18.1S	75-09-45.8E
b	03-29-25.0S	75-10-21.1E
c	03-33-11.5S	75-29-43.6E

191. For the avoidance of doubt, point c is beyond the outer limit of the OCS entitlement claimed by the Maldives and there is therefore no question of the Parties' boundary continuing as far as its coordinates. However, point c is used to construct the equidistance line that is to run to the outer limit of the Maldives' OCS, which in turn is to be delineated at a future date following recommendations of the CLCS.

### **III. Conclusion**

192. In conclusion, as regards the delimitation of the area in which the Maldives' continental shelf beyond 200 M and Mauritius' continental shelf within 200 M overlap, the equidistance line should continue from point 46 until it meets the outer edge of the Maldives' continental margin to be delineated following recommendations by the CLCS.

## SUBMISSIONS

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

- (a) Mauritius' claim to a continental shelf beyond 200 M from the base lines from which its territorial sea is measured should be dismissed on the basis that it is:
  - (i) Outside the jurisdiction of the Special Chamber; and/or
  - (ii) Inadmissible;
- (b) The single maritime boundary between the Parties is a series of geodesic lines connecting the following points 1 to 46 as follows:

Point	Latitude	Longitude
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-51.5S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E
18	02-43-54.4S	071-40-48.6E
19	02-44-00.9S	071-41-10.9E
20	02-44-39.2S	071-43-20.8E
21	02-48-42.8S	071-57-08.7E
22	02-49-08.1S	071-58-44.4E
23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E
29	03-00-34.7S	072-44-17.0E
30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E

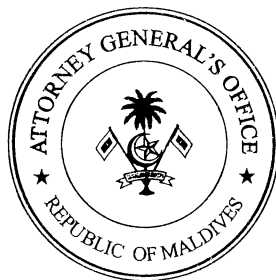
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E
40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E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

- (c) In respect of the Parties' Exclusive Economic Zones, the maritime boundary between them connects point 46 to the following point 47 following the 200 M limit measured from the baselines of the Maldives:

Point	Latitude	Longitude
47	03-18-40.1S	075-15-43.2E

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

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



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## TABLE OF FIGURES

<b>FIGURE</b>	<b>TITLE</b>
Figure 1	Indian Ocean: Showing Relative Positions of the Maldives, Mauritius and Chagos Archipelago
Figure 2	The Republic of Maldives: General Overview
Figure 3	The Chagos Archipelago
Figure 4	Republic of Maldives: Areas of Continental Shelf Extending Beyond 200 M
Figure 5	The General Configuration of the Chagos Archipelago
Figure 6	The Overlap between the Maldives' OCS Claim and Mauritius' EEZ Claim
Figure 7	3D View of the Seafloor Topography of the Central Indian Ocean
Figure 8	Direct Submerged Prolongation of Maldives and Mauritius
Figure 9	Submerged Prolongation Pathway to FOS-VIT31B for Mauritius
Figure 10	Addu Atoll
Figure 11	Fuvahmulah
Figure 12	Chagos Archipelago: Peros Banhos Atoll
Figure 13	Chagos Archipelago: Salomon Islands Atoll
Figure 14	Nelson's Island
Figure 15	Blenheim Reef: Comparison of Chart against Satellite Imagery
Figure 16	North Chagos Archipelago: Extract from BA Chart 727 showing Water Depths between Salomon Islands and Blenheim Reef
Figure 17	North Chagos Archipelago: 86% of Blenheim Reef is beyond 12 M from Salomon Islands
Figure 18	Blenheim Reef
Figure 19	Overlapping Projections: Areas of Overlapping 200 M Projections Measured from the Relevant Coasts of the Parties
Figure 20	Maldives Relevant Coast
Figure 21	Chagos Archipelago: Relevant Coasts of Peros Banhos, Salomon Islands and Nelson's Island

Figure 22	Addu Atoll: Maldives Basepoints
Figure 23	Bahrain: Location of Fasht al Azm and Sitrah Island
Figure 24	<i>Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India</i> , PCA Case No 2016-16, India's Counter Memorial Vol. 1 Sketch Map 2.2 p. 17
Figure 25	Chagos Archipelago: Mauritius' Basepoints
Figure 26	Republic of Maldives and Chagos Archipelago: Provisional Equidistance Line
Figure 27	Division of the Relevant Area Based on the Provisional Equidistance Line
Figure 28	Complete EEZ Boundary Proposed by the Maldives
Figure 29	Overlap in the Continental Shelf Beyond Point 46
Figure 30	Continental Shelf Boundary Proposed by the Maldives
Figure 31	Delimitation of the Continental Shelf: Grey Area Proposed by the Maldives and Method of Delimitation

## TABLE OF ANNEXES

ANNEX	TITLE
Annex 1	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”, 22 May 2019, A/RES/73/295
Annex 2	“ITLOS rules in favour of Mauritius following dispute over maritime boundaries”, Matrix Chambers, 29 January 2021 < <a href="https://www.matrixlaw.co.uk/news/itlos-rules-in-favour-of-mauritius-following-dispute-over-maritime-boundaries/">https://www.matrixlaw.co.uk/news/itlos-rules-in-favour-of-mauritius-following-dispute-over-maritime-boundaries/</a> > accessed 24 November 2021
Annex 3	Official governmental website of the Republic of Mauritius, “About Chagos Archipelago” < <a href="https://govmu.org/EN/Pages/AboutChagos.aspx">https://govmu.org/EN/Pages/AboutChagos.aspx</a> > accessed 24 November 2021
Annex 4	Food and Agriculture Organization of the United Nations, Fishery Country Profile of the Republic of Mauritius, January 2006 < <a href="http://www.fao.org/fishery/docs/DOCUMENT/fcp/en/FI_CP_MU.pdf">http://www.fao.org/fishery/docs/DOCUMENT/fcp/en/FI_CP_MU.pdf</a> > accessed 24 November 2021
Annex 5	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
Annex 6	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
Annex 7	Constitution of the Republic of Maldives, 2008 (extracts) < <a href="http://extwprlegs1.fao.org/docs/pdf/mdv136135.pdf">http://extwprlegs1.fao.org/docs/pdf/mdv136135.pdf</a> > accessed 24 November 2021
Annex 8	Environment Protection and Preservation Act of the Maldives (Law No. 4/93, as amended by Law No. 12/2014) (extracts)
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