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

REPUBLIC OF MAURITIUS / REPUBLIC OF MALDIVES

REPLY OF MAURITIUS

VOLUME I

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CHAPTER 1
INTRODUCTION

1.1 On 15 December 2021, the Special Chamber fixed the time limits for the filing of the second round of written pleadings by the Parties. The Republic of Mauritius ("Mauritius") submits this Reply in accordance with that Order.

1.2 Mauritius' case, summarised in its Notification and Statement of Claim, is set out in detail in its Memorial dated 25 May 2021. As stated therein, this dispute concerns the delimitation of the Exclusive Economic Zone ("EEZ") and continental shelf of Mauritius and the Republic of Maldives ("Maldives") in the Indian Ocean. Nothing in Maldives' Counter-Memorial has caused Mauritius to change the line of delimitation it argued for in its Memorial, although the site visit carried out in February 2022, as detailed in this Reply, has offered further evidence in support of that line. In accordance with the ITLOS *Guidelines Concerning the Preparation of Cases*, Mauritius' Reply is focused on responding to the points raised by Maldives in its Counter-Memorial.

1.3 Mauritius notes that there are significant areas of agreement between the Parties. The Parties agree:

a. on the methodology to be adopted in relation to the delimitation of the maritime boundary within 200 M, with both Mauritius and Maldives inviting the Special Chamber to adopt the well-established three-step methodology, often referred to as the "equidistance/relevant circumstances" method, which is regularly applied by the International Court of Justice ("ICJ"), ITLOS and *ad hoc* arbitral tribunals to achieve an equitable delimitation of maritime spaces;[1]

b. on the selection of all 41 base points located on the southern coast of Addu Atoll in Maldives,[2] and on 9 of Mauritius' 13 base points located along the coast of Île Diamant, Île de la Passe and Moresby Island in the northeast of Peros Banhos Atoll (MUS-BSE-1 to MUS-BSE-9);[3]

c. that there are no relevant circumstances that call for an adjustment of the provisional equidistance line in the maritime areas up to 200 M (save that Maldives argues that adjustment would be required if Blenheim Reef is given full effect);[4]

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[1] Memorial of the Republic of Mauritius (hereinafter "MM"), paras. 4.2, 4.14-4.47; Counter-Memorial of the Republic of Maldives (hereinafter "MCM"), paras. 5, 9, 113.

[2] MM, para. 4.29 and Table 4.1; MCM, para. 133 and Table 1.

[3] MM, para. 4.29 and Table 4.1; MCM, para. 149 and Table 2.

[4] MM, paras. 4.32-4.4.38; MCM, paras. 151-152.

d. that the provisional equidistance line does not – in any event – produce a result that is disproportional.[5]

1.4 In its Memorial, Mauritius located 4 base points on Blenheim Reef, a low-tide elevation ("LTE") located within 10.6 M of Île Takamaka in Salomon Islands Atoll.[6] Mauritius proceeded on the basis that these base points, identified by the use of the standard CARIS LOTS software, were appropriate for the purposes of generating an equidistance line. Maldives agrees that CARIS LOTS is the appropriate method to be adopted for the identification of base points. However, Mauritius also indicated the need for an on-site survey of Blenheim Reef to confirm, with precision, the coordinates of the base points at Blenheim Reef.[7]

1.5 In its Counter-Memorial, Maldives states, *inter alia*, that Blenheim Reef is "a remote low-tide elevation"[8] that is "barely above water at lowest tides and completely submerged at other times."[9] It further argues that Blenheim Reef does not form part of Mauritius' "relevant coast,"[10] and is "not an appropriate site for base points for the construction of the equidistance line."[11] Mauritius does not agree with these contentions, and considers Blenheim Reef to be an integral part of Mauritius' relevant coast, and that archipelagic base points located at Blenheim Reef are properly to be used for the delimitation of the maritime boundary.

1.6 Given the centrality of Blenheim Reef to these proceedings, and for the proper assessment and appreciation by the Special Chamber of this and other maritime features for the delimitation of the maritime boundary between the Parties, Mauritius considered it necessary to undertake an on-site technical and scientific survey of Blenheim Reef and its appurtenant waters, including Salomon Islands Atoll. This was all the more so after Maldives characterised Blenheim Reef as "the central dispute dividing the Parties."[12]

I. Geodetic Survey

1.7 In February 2022, Mauritius, for the first time in its history, conducted a scientific survey of Peros Banhos Atoll, Salomon Islands Atoll, Blenheim Reef and appurtenant waters. The survey, which took place over five days, with an additional ten days of travel to and from the area, involved a number of independent scientists. It also included five members of the Chagossian community, who have particular knowledge of the islands around Blenheim Reef, and whose return to the islands of their birth is a matter to which the Government of Mauritius

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[5] MM, paras. 4.39-4.47 ; MCM, paras. 153-158.

[6] MM, para. 4.29 and Table 4.1 (MUS-BSE-10 to MUS-BSE-13).

[7] *Ibid.*, paras. 1.11, 2.25.

[8] MCM, paras. 5, 114.

[9] *Ibid.*, para. 104.

[10] *Ibid.*, paras. 114, 127-130.

[11] *Ibid.*, paras. 12(d), 134-148.

[12] *Ibid.*, para. 114.

is strongly committed, in accordance with the rulings of the ICJ and ITLOS, and UN General Assembly resolution 73/295. The findings of the survey have offered new information and evidence that Mauritius is able to put before the Special Chamber. As a result of the geodetic survey of Blenheim Reef – possibly the first on-site survey of that feature ever carried out – Mauritius has been able to obtain more accurate information on the Reef, in particular the existence of extensive areas of drying reef along the northern, eastern and western flanks of Blenheim Reef's seaward perimeter (including the areas directly facing Maldives). The presence, nature and extent of the drying reef was previously unknown to Mauritius, and could not have been established without this scientific investigation. It was not possible to ascertain the extensiveness of the drying portions of the reef, extending to 19 km of Blenheim Reef's circumference, from satellite imagery and other sources. As a consequence of the survey, the Parties and the Special Chamber now have available to them far more detailed and reliable evidence. The findings of the geodetic survey are set out at Annex 1.

1.8 The Parties agree that Blenheim Reef is an LTE within the meaning of Article 13 of UNCLOS, although Maldives seeks to minimise the significance and effect of Blenheim Reef in its Counter-Memorial by arguing, *inter alia*, that it is "covered with water" below Mean Sea Level, with "waves just breaking at its highest point."[13] The findings of Mauritius' geodetic survey demonstrate that Maldives' characterisation of Blenheim Reef is not accurate. Blenheim Reef features rocks and coral heads as well as "extensive areas" of drying reef exposed at Mean Sea Level.[14] As a result of the geodetic survey, Maldives' arguments about the "appropriateness" of Blenheim Reef for locating base points to construct the provisional equidistance line fall away. Furthermore, as fully explained in the following chapter, pursuant to Part IV of the United Nations Convention on the Law of the Sea ("UNCLOS" or "the Convention") on archipelagic States, Mauritius is entitled to rely on its archipelagic baselines that connect with Blenheim Reef for the construction of the equidistance line to delimit the Parties' overlapping entitlements within 200 M.

1.9 For the avoidance of doubt, Mauritius maintains all of the arguments advanced in its Memorial. Blenheim Reef is not only an LTE – situated 10.6 M from Île Takamaka in Salomon Islands Atoll, which is permanently above water – but also a drying reef. For the reasons explained in the Memorial, Mauritius was entitled to locate base points on Blenheim Reef. However, the recent discovery of an extensive "drying reef" on the feature, within the meaning of Article 47(1) of UNCLOS, means that Mauritius is able to rely on its archipelagic baselines in accordance with Part IV of the Convention to delimit the maritime boundary. This does not affect the methodology to be adopted by the Special Chamber: Mauritius relies on the same base points, and this results in the same proposed delimitation line. However, for the reasons explained in the following chapters, the findings of the recent survey reinforce Mauritius' position that, in accordance with the requirements of the Convention, Blenheim Reef is entitled to be given full effect in the delimitation of the Parties' overlapping maritime entitlements.

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[13] MCM, para. 108.

[14] Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022, p.8 (hereinafter "*Geodetic Survey of Blenheim Reef*") (Mauritius Reply (hereinafter "MR"), Vol. III, Annex 1).

II. Maldives' Failure to Co-operate with Regard to the Geodetic Survey

1.10 Given the need for an on-site survey, Mauritius took significant preparatory steps, including retaining an independent bathymetric survey vessel and crew. Having regard to weather conditions, the availability of a vessel and crew, as well as the timing of the filing of this Reply, the site visit was scheduled to take place in mid-February. Due to the distances between the areas to be surveyed and the Island of Mauritius and Maldives respectively, the charterers of the vessel indicated that it would be most time and cost effective for the vessel to depart from the port of Gan (in Addu Atoll) in Maldives. Blenheim Reef is located only 269 M from Gan, but it lies 1,247 M from Port Louis in Mauritius.

1.11 On 1 December 2021, Mauritius addressed a Note Verbale to the Ministry of Foreign Affairs of Maldives expressing the hope that Maldives would facilitate the departure of the survey vessel and the Mauritius team from Gan when it undertook the survey. Mauritius undertook to provide Maldives with all the relevant and necessary information in a timely manner in advance of the visit.[15] Mauritius hoped that, in the interests of providing assistance to the Special Chamber and in keeping with the friendly relations that are said to exist between the two States, Maldives would facilitate the departure and return of the survey vessel and the Mauritius team from its territory. Mauritius sought Maldives' assistance for reasons of efficiency and practicality, and to save significantly on time and cost.

1.12 Mauritius did not receive a response from Maldives for six weeks. Accordingly, on 12 January 2022, Mauritius was constrained to bring the absence of a response from Maldives to the attention of the Special Chamber in order to seek its urgent assistance.[16] Mauritius hoped that Maldives would confirm its assistance by permitting members of the Mauritius delegation to embark and disembark at Gan.[17]

1.13 The following day, 13 January 2022, in a letter addressed to the ITLOS Registrar, Maldives expressed a willingness to accede to Mauritius' request to conduct a survey and grant permission to individuals with technical roles directly involved in the survey to enter and exit the port at Gan, "subject to Mauritius obtaining the necessary clearances."[18] However,

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[15] Note Verbale dated 1 December 2021 from the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius to the Ministry of Foreign Affairs of the Republic of Maldives (MR, Vol. III, Annex 7).

[16] Article 49 of the ITLOS Rules provides that "[t]he proceedings before the Tribunal shall be conducted without unnecessary delay or expense"; Article 77(1) states that "[t]he Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal may consider to be necessary for the elucidation of any aspect of the matters in issue…"; and Article 81 provides that the Tribunal "may at any time decide, at the request of a party or *proprio motu*, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties."

[17] Letter dated 12 January 2022 from the Agent of the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea (MR, Vol. III, Annex 8).

[18] Letter dated 13 January 2022 from the Agent of the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea (MR, Vol. III, Annex 9).

in a Note Verbale to Mauritius on the same day, Maldives set out additional conditions which significantly limited the scope of its offer. Maldives stated that it would:

> grant permission only to *individuals with technical roles directly involved in the aforementioned Survey* to enter and exit the port at Gan. The Republic of Maldives requests that the Republic of Mauritius inform it in advance of the specific individuals who will attend the Survey and their technical role.[19]

In addition to restricting the composition of Mauritius' survey team (by excluding Mauritius' lawyers and officials), Maldives refused to extend permission to media personnel. These terms were unacceptable to Mauritius, which considered that it was for Mauritius alone to decide on the composition of a team to survey its territory.

1.14 Regrettably, Maldives also imposed a requirement that Mauritius seek "necessary clearances" from the United Kingdom for the conduct of the survey.[20] This requirement was inconsistent with the Special Chamber's Judgment on Preliminary Objections, which confirmed that the United Kingdom has no legal interest in the Chagos Archipelago, and was also inconsistent with the terms of UN General Assembly resolution 73/295, which expressly requires Member States, including Maldives, "to refrain from … recognizing or giving effect to any measures taken by or on behalf of the 'British Indian Ocean Territory.'"[21] These conditions imposed by Maldives were also inconsistent with its offer to collaborate in good faith.[22]

1.15 In light of these conditions, Mauritius was not able to embark on the survey from Gan in Maldives and was compelled to make alternative arrangements. As a result, the survey vessel departed from Seychelles, which, in contrast to Maldives, imposed no conditions on Mauritius to depart from its territory. Seychelles is located more than 1,000 M from Blenheim Reef, almost four times further away than Gan in Maldives. As a consequence of not being able to depart from Gan, the overall journey to and from the Chagos Archipelago was extended by six days, resulting in significant additional costs, in excess of 460,000 euros for the charter of the survey vessel alone.

1.16 Mauritius recognises that ordinarily in proceedings of this nature, the Parties bear their own costs. However, in the exceptional circumstances described above, Mauritius invites the

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[19] Note Verbale dated 13 January 2022 from the Ministry of Foreign Affairs of the Republic of Maldives to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius (MR, Vol. III, Annex 10) (emphasis added).

[20] *Ibid.*

[21] Letter dated 17 January 2022 from the Agent of the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea (MR, Vol. III, Annex 11).

[22] Letter dated 20 January 2022 from the Agent of the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea (MR, Vol. III, Annex 12); Letter dated 8 February 2022 from the Agent of the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea (MR, Vol. III, Annex 13).

Special Chamber, in the exercise of its wide discretion under Article 34 of the ITLOS Statute and Article 125 of the ITLOS Rules, to order that these additional and unjustified costs incurred by Mauritius be paid by Maldives.

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1.17 In addition to the extra time and cost imposed on Mauritius by Maldives, Mauritius wishes to place on the record its regret at the tone adopted by Maldives in its Counter-Memorial. On numerous occasions Maldives implies that there exists a continuing sovereignty dispute between the United Kingdom and Mauritius over the Chagos Archipelago;[23] it continues to reiterate the statements it made in this regard before the Special Chamber in the hearing on Preliminary Objections,[24] all of which were comprehensively rejected by the Special Chamber; it refers repeatedly to "BIOT" and "British Indian Ocean Territory" despite paragraph 5 of UN General Assembly Resolution 73/295, which calls upon UN Member States not to recognise this unlawful entity; and it singles out a news item on the website of counsel for Mauritius' chambers as indicative of the existence of such a sovereignty dispute, apparently seeking to imply that Mauritius' claims or arguments are not made in good faith.[25] Mauritius respectfully submits that these and other unfriendly remarks are unfounded and inappropriate to the dignity that should characterise inter-State proceedings such as these, particularly where they involve two friendly neighbouring States.[26] The remarks of Maldives are noted but shall not be responded to. It is enough, once again, to set out some of the determinations of the Special Chamber in its Judgment on Preliminary Objections:

i. "…it is inconceivable that the United Kingdom, whose administration over the Chagos Archipelago constitutes a wrongful act of a continuing character and thus must be brought to an end as rapidly as possible, and yet who has failed to do so, can have any legal interests in permanently disposing of maritime zones around the Chagos Archipelago by delimitation."[27]

ii. "…determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion is not binding. This is true of the ICJ's determinations in the *Chagos* advisory opinion, *inter alia*, that the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago, and that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible. The Special Chamber considers that those determinations do have legal effect."[28]

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[23] *See, e.g.*, MCM, paras. 3-4 and footnote 74 on p.19.

[24] *See, e.g.*, *ibid.*, paras. 47-48 and the accompanying footnotes.

[25] *See ibid.*, para. 4, footnote 6.

[26] For example, Maldives accuses Mauritius of advancing a "misleading narrative" in MCM, para. 37.

[27] *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment of 28 January 2021 (hereinafter "Preliminary Objections Judgment"), para. 247.

[28] *Ibid.*, para. 205.

iii. "...Mauritius can be regarded as the coastal State in respect of the Chagos Archipelago for the purpose of the delimitation of a maritime boundary even before the process of the decolonization of Mauritius is completed."[29]

iv. "...Mauritius can be regarded as 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 and the concerned State within the meaning of paragraph 3 of the same articles."[30]

Mauritius expresses the hope that going forward the conduct of these proceedings will take full account of the determinations of the Special Chamber and be mutually respectful, even if differences exist between the Parties on issues of fact and law as regards technical aspects of the delimitation.

1.18 Mauritius also wishes to point out that Maldives' Counter-Memorial contains extraneous material that simply has no place in a pleading that relates to a maritime delimitation. For example, its arguments on the "importance of fisheries with respect to the Parties maritime claims" are entirely irrelevant to the Parties' maritime claims or the delimitation that the Special Chamber is tasked with effecting.[31] Further, it is wholly inappropriate for Maldives to express "serious concern" and call upon Mauritius to give a "binding commitment" to its "maintenance of a no-take MPA [Marine Protected Area]."[32] The "MPA" to which Maldives regrettably refers was declared by the United Kingdom and ruled to be unlawful. On 18 March 2015, the UNCLOS Annex VII Arbitral Tribunal in the *Chagos Marine Protected Area Arbitration* declared that, in seeking to establish this "MPA," the United Kingdom had breached its obligations under Article 2(3), 56(2) and 194(4) of UNCLOS.[33] For the record, Mauritius is fully committed to the protection of the marine environment and its ecosystems, in particular around the Chagos Archipelago. Marine Protected Areas have been established around the main Island of Mauritius and Rodrigues to conserve and protect marine biodiversity and – as a party to various international conventions – Mauritius is committed to protecting the rich marine biodiversity of the Chagos Archipelago.[34]

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[29] *Ibid.*, para. 250.

[30] *Ibid.*, para. 251.

[31] MCM, paras. 19-25.

[32] *Ibid.*, para. 25.

[33] *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award of 18 March 2015, (hereinafter "*Chagos Marine Protected Area Arbitration*"), para. 547.

[34] *See, e.g.*, Mauritius Sixth National Assembly, Parliamentary Debates (Hansard) (unrevised), 6 August 2019, Reply to PQ B/745, pp. 172-173 ("As far as the Chagos Archipelago is concerned, Government is intent on protecting its rich marine biodiversity. In this respect, serious consideration is being given to the creation of a marine protected area by Mauritius around the Chagos Archipelago with the support of relevant partners"), *available at* https://mauritiusassembly.govmu.org/Documents/Hansard/2019/hansard2619.pdf (last accessed 12 April 2022); Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius, *Voluntary National Review Report of Mauritius 2019,* Chapter 14, pp. 91-94, *available at* https://foreign.govmu.org/Documents/2020%20-

1.19 Given what Maldives has stated, Mauritius wishes to make clear that it is committed to the protection and preservation of the marine environment of the Chagos Archipelago, in accordance with the requirements of its law and the applicable rules of international law. As noted above, it is also committed to implementing a programme for resettlement in the Chagos Archipelago, particularly with a view to enabling its citizens of Chagossian origin who were forcibly removed from the Chagos Archipelago by the United Kingdom to fulfil their aspiration to return to their birthplace in full dignity and with due respect for their human rights.[35]

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1.20 Mauritius' Reply comprises three volumes. This **Volume I** sets out the main text of the Reply, together with illustrative charts and figures. **Volume II** contains the full set of charts and figures that accompany the main text. **Volume III** contains the Reply's annexes,[36] including the report on the geodetic survey of Blenheim Reef carried out by Ola Oskarsson and Thomas Mennerdahl, as well as an assessment by Dr. David Dodd which confirms the accuracy of that report. These two independent reports are set out at Annex 1 and Annex 2 in Volume III.

1.21 The main text of the Reply (Volume I) is comprised of four chapters, including this Introduction. **Chapter 2** responds to Maldives' arguments concerning the delimitation of the EEZ and continental shelf within 200 M. It refutes Maldives' arguments that Blenheim Reef: (i) is not part of the relevant coast of Mauritius; and (ii) is "not appropriate" for the location of base points for the construction of the provisional equidistance line.[37] It summarises the findings of the geodetic survey carried out by Mauritius in February 2022, which strengthen the legal basis for the line of delimitation claimed by Mauritius within 200 M. The survey reveals extensive areas of drying reef at Blenheim Reef, which are not apparent from satellite imagery and other off-site sources. This new evidence confirms that Blenheim Reef is fully within the remit of Article 47(1) of UNCLOS, and affirms the validity of Mauritius' archipelagic baselines. It defeats any argument that Blenheim Reef is "not appropriate" for the location for base points. By virtue of Article 47(1), as an archipelagic State, Mauritius is entitled to draw archipelagic baselines, including by joining the outermost points of Blenheim Reef. Article 48 makes clear that Blenheim Reef, as a feature located within these baselines, is entitled to be given full effect in the delimitation of the EEZ and continental shelf between the Parties.

%20migrated%20data/VNR%20REPORT/Mauritius%20VNR%20Report%202019(2).pdf (last accessed 12 April 2022).

[35] *See* Mauritius Seventh National Assembly, Parliamentary Debates (Hansard) (unrevised), 23 March 2021, Statement of the Prime Minister of the Republic of Mauritius, Hon. Pravind Kumar Jugnauth, p. 111-116, *available at* https://mauritiusassembly.govmu.org/Documents/Hansard/2021/hansard0121.pdf (last accessed 12 April 2022).

[36] In accordance with the ITLOS *Guidelines Concerning the Preparation and Presentation of Cases*, this Reply is "as short as possible" and Mauritius has not reproduced documents that are readily accessible, instead providing weblinks where possible.

[37] MCM, para. 114.

1.22 Moreover, the geodetic survey has allowed Mauritius to plot its archipelagic baselines with greater precision, and to make minor adjustments in its archipelagic base points. These have no effect on the provisional equidistance line or the present delimitation.[38]

1.23 **Chapter 3** responds to Maldives' various arguments on jurisdiction and admissibility, including Maldives' assertion that Mauritius is attempting to "significantly expand" the dispute between the Parties "by making an entirely new claim to an OCS."[39] In its Counter-Memorial, Maldives argues, *inter alia*, that the Special Chamber does not have jurisdiction to delimit the Parties' continental shelves beyond 200 M because there was no dispute between the Parties in respect of overlapping outer continental shelf claims at the time Mauritius filed its claim, and that Mauritius' claim is thus inadmissible. Each of Maldives' arguments is without merit and is comprehensively rebutted. The Special Chamber very obviously has jurisdiction to proceed with the delimitation of the maritime boundary between the Parties, both within and beyond 200 M, and the claim of Mauritius to an outer continental shelf is fully admissible.

1.24 In **Chapter 4** Mauritius responds to the arguments set out in the Counter-Memorial regarding the delimitation of the continental shelf beyond 200 M. Based on the geology and geomorphology of the seabed, Mauritius demonstrates, once again, that the equitable solution required by Article 83 of UNCLOS demands that the area of overlapping entitlements beyond 200 M be delimited by means of a line that apportions that area equally. Such a delimitation is effected by means of an azimuth of 55 degrees. Nothing in the Counter-Memorial justifies delimiting the continental shelf beyond 200 M in a different manner.

1.25 Following the scientific survey of Blenheim Reef and appurtenant waters, and the detailed work carried out by Mauritius' Department for Continental Shelf, Maritime Zones Administration and Exploration, Mauritius submitted its Partial Submission to the Commission on the Limits of the Continental Shelf ("CLCS") with respect to the Northern Chagos Archipelago Region on 12 April 2022.[40] This includes more precise plotting of co-ordinates of the fixed points which define the limits of Mauritius' continental shelf in the Northern Chagos Archipelago Region. As described in Chapter 4, these minor adjustments – which take into account the CARIS LOTS base points adopted by Mauritius in these

[38] As described in para. 2.32 below and the accompanying footnote, Mauritius' archipelagic baselines around the Chagos Archipelago were given due publicity, and a list of coordinates and accompanying charts were deposited with the UN Secretary-General on 26 July 2006. Five archipelagic base points are located along the northern coast of Peros Banhos Atoll (C74-C78) and three archipelagic base points are located at Blenheim Reef (C83-C85). Mauritius has become aware that base point C85 was erroneously plotted approximately 840 meters to the north of Blenheim Reef. Minor adjustments to Mauritius' archipelagic base points are in the course of being promulgated by new regulations. In relation to Blenheim Reef, Mauritius anticipates that the four base points identified by the CARIS LOTS software for the purposes of this delimitation will be used for the construction of Mauritius' revised archipelagic baselines pursuant to Article 47 of the Convention. These minor adjustments will not effect the present delimitation because Mauritius has not relied on base point C85 for the construction of the provisional equidistance line, relying instead on base points identified by the CARIS LOTS software, a methodology that Maldives also adopts.

[39] MCM, para. 6.

[40] Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region (April 2022) (hereinafter "Mauritius' Partial Submission to the CLCS"), (MR, Vol. III, Annex 3).

proceedings – do not result in any significant change to the area of overlapping entitlements beyond 200 M, such that Mauritius' proposed delimitation line beyond 200 M remains unchanged from the Memorial.

1.26 The Reply concludes by setting out Mauritius' Submissions, namely, that the maritime boundary between Mauritius and Maldives should be delimited by an equidistance line in the area within 200 M of their respective coasts, and, in the area beyond 200 M, by an azimuth that divides the area of overlapping entitlements in equal parts. Mauritius also invites the Special Chamber to order that Maldives pay the additional costs incurred by Mauritius in connection with its survey of Blenheim Reef and appurtenant waters as a consequence of the conduct of Maldives described in paragraph 1.15 above.

CHAPTER 2
DELIMITATION OF THE EEZ AND CONTINENTAL SHELF WITHIN 200 M

I. Introduction

2.1 This Chapter addresses the delimitation of the Parties' respective EEZs and continental shelves within 200 M.

2.2 The dispute between the Parties as to the delimitation within 200 M is relatively narrow. The Parties agree on the methodology to be adopted: both Mauritius and Maldives invite the Special Chamber to adopt the "internationally established" three-step methodology, often referred to as the "equidistance/relevant circumstances" method, which is regularly applied by the ICJ, ITLOS and *ad hoc* arbitral tribunals to achieve an equitable delimitation of maritime spaces.[41] However, the Parties disagree on the application of this methodology to the geographic circumstances of this case. In particular, the Parties disagree on the role and effect of Blenheim Reef in the delimitation process. Maldives argues that Blenheim Reef is "not part of the relevant coast" of Mauritius and an "inappropriate site" for the location of base points for the construction of the provisional equidistance line.[42] In the alternative, Maldives argues that if base points are located on Blenheim Reef, this would have an "extraordinarily disproportionate effect" on the delimitation.[43]

2.3 The Parties agree that Blenheim Reef is a low-tide elevation within the meaning of Article 13 of the Convention, and that it is located within 10.6 M of a high-tide feature: Île Takamaka in Salomon Islands Atoll. Under well-established jurisprudence, Mauritius is thus entitled, on this basis alone, to declare a 200 M EEZ and continental shelf from base points on Blenheim Reef.[44] This was Mauritius' argument in the Memorial, and it remains the basis for Mauritius' 200 M entitlement from Blenheim Reef.

2.4 In its Counter-Memorial, Maldives seeks to minimise the significance and effect of Blenheim Reef by arguing that it is "covered with water" below Mean Sea Level with "waves just breaking at its highest point."[45] Since the filing of the Counter-Memorial, Mauritius has – for the first time in its history – been able to visit and carry out an on-site scientific survey of Peros Banhos Atoll, Salomon Islands Atoll, Blenheim Reef and appurtenant waters. The findings of this geodetic survey have had a material impact on the evidence that Mauritius is able to put before the Special Chamber. In particular, the survey demonstrates that Maldives'

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[41] *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment of 23 September 2017 (hereinafter "*Ghana/Côte d'Ivoire*"), para. 360. *See also* MM, paras. 4.14-4.17.

[42] MCM, paras. 9, 126-130, 135-148 and footnote 277.

[43] *Ibid.*, para. 152.

[44] *See infra* paras. 2.46-2.52.

[45] MCM, para. 108.

characterisation of Blenheim Reef is inaccurate. Blenheim Reef features rocks and coral heads as well as "extensive areas" of drying reef exposed at Mean Sea Level.[46] As a result of the survey, Maldives' arguments about the "appropriateness" of Blenheim Reef as a location for base points to construct the provisional equidistance line fall away and become moot. Pursuant to Part IV of the Convention on archipelagic States, Mauritius, an archipelagic State under Article 47 of UNCLOS, is entitled to rely on its archipelagic baselines, which connect with Blenheim Reef, for the construction of the equidistance line to delimit the Parties' overlapping entitlements within 200 M.

2.5 For the avoidance of doubt, Mauritius maintains all of the arguments advanced in the Memorial. Blenheim Reef is a low-tide elevation situated just 10.6 M from Île Takamaka in Salomon Islands Atoll. For the reasons explained in the Memorial, Mauritius is entitled to locate base points on Blenheim Reef. However, the recent discovery of an extensive "drying reef" within the meaning of Article 47(1) of UNCLOS also entitles Mauritius to rely on its archipelagic baselines in accordance with Part IV of the Convention. This does not in any way affect the methodology to be adopted by the Special Chamber: Mauritius relies on the same base points, and this results in the same proposed delimitation line. However, for the reasons explained in this Chapter, the findings of the survey reinforce Mauritius' position that, in accordance with the requirements of the Convention, Blenheim Reef has to be given full effect in the delimitation of the Parties' overlapping maritime entitlements.

2.6 The dispute between the Parties over Blenheim Reef is the most significant matter that the Special Chamber will need to resolve in order to carry out the delimitation of the Parties' overlapping entitlements within 200 M. According to Maldives, Blenheim Reef is "the central dispute dividing the Parties."[47] Adopting the three-stage methodology, which is accepted by the Parties, Maldives' arguments relating to Blenheim Reef are unsustainable for the following reasons (which are further developed below):

a. *At the first stage*: None of the authorities relied upon by Maldives as to the "appropriateness" of using Blenheim Reef for the location of base points are relevant to the present dispute. Moreover, Maldives completely overlooks the particular circumstances of this case: Blenheim Reef falls within Mauritius' archipelagic baselines, which comply fully with the requirements of Article 47 of the Convention. In the only other maritime delimitation case featuring opposing States where one of the parties (Trinidad and Tobago) relied on archipelagic baselines, the Arbitral Tribunal adopted Trinidad and Tobago's archipelagic base points for the construction of the equidistance line, and these base points were given full effect in the delimitation.[48] Mauritius invites the Special Chamber to adopt the same approach in this case.

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[46] *Geodetic Survey of Blenheim Reef*, p. 8 (MR, Vol. III, Annex 1).

[47] MCM, para. 114.

[48] *Barbados v. Trinidad and Tobago*, PCA Case No. 2004-02, Award of 11 April 2006 (hereinafter "*Barbados v. Trinidad and Tobago*").

b. *At the second stage*: Blenheim Reef's "extraordinarily disproportionate effect" alleged by Maldives is grossly overstated.[49] Maldives contends that giving Blenheim Reef full effect would result in an "additional 4,690 km^2 of maritime area" for Mauritius.[50] This amounts to just 4.9% of the 95,600 km^2 area of overlapping entitlements within 200 M (*i.e.*, "the relevant area").[51] It is unarguable that the provisional equidistance line requires adjustment.

c. *At the third stage*: Blenheim Reef is part of the "relevant coast" for the purposes of calculating the ratio of the Parties' respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line. In any event, the dispute between the Parties as to the "relevant coast" of Mauritius and Maldives is largely moot: whichever formulation the Special Chamber adopts, there is no "marked," "great," "significant" or "gross" disproportionality.[52]

2.7 This Chapter addresses the areas of dispute between the Parties on the delimitation within 200 M as follows:

a. **Section II** sets out the geographical setting of Blenheim Reef and describes the findings of the on-site geodetic survey carried out by Mauritius in February 2022.

b. **Section III** addresses the legal regime applicable to Blenheim Reef: Part IV of the Convention on archipelagic States. It demonstrates that Mauritius' archipelagic baselines around the Chagos Archipelago comply with the requirements of Article 47 of the Convention and explains the effect this has on the delimitation.

c. **Section IV** applies the law to the facts and sets out the proper approach to the three-step delimitation process within 200 M.

II. The Geographical Setting

A. Mauritius (the Chagos Archipelago)

2.8 As described in the Memorial, the Chagos Archipelago is composed of more than 60 islands, banks and reefs lying between 4°44'S and 7°39'S, and 70°50'E and 72°47'E.[53] Most of the high-tide features are clustered together in ring-shaped coral atolls, which include Diego

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[49] MCM, para. 152.

[50] *Ibid.*, paras. 9, 152. Mauritius calculates this area to be 4,694.4 km^2.

[51] *See infra* paras. 2.80-2.83.

[52] *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61, para. 122 (hereinafter "*Black Sea* case"); and *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624, paras. 240 and 242 (hereinafter "*Nicaragua v. Colombia*").

[53] MM, para. 2.11.

Garcia, Egmont Islands, Eagle Islands, Three Brothers, Nelson's Island, Salomon Islands Atoll and Peros Banhos Atoll (see Figure 2.4 in Mauritius' Memorial).

2.9 Maldives accepts Mauritius' 9 base points located along the coast of Île Diamant, Île de la Passe and Moresby Island in the northeast of Peros Banhos Atoll (MUS-BSE-1 to MUS-BSE-9).[54] However, Maldives disagrees with the 4 base points Mauritius has placed on Blenheim Reef (MUS-BSE-10 to MUS-BSE-13)[55] and instead advances 3 alternative base points on Île Yeye in Peros Banhos Atoll and 6 base points in Salomon Islands Atoll.[56]

2.10 Whereas Mauritius has now carried out a survey of the features in the north of the Chagos Archipelago, directly facing Maldives, it has not yet had the opportunity to carry out a survey of the rest of the Chagos Archipelago. Based on recent satellite imagery and the most detailed charts available to Mauritius, the main high-tide features of the Chagos Archipelago cover a total area of 52.07 km^2 and have a total coastal perimeter of 293.28 km.[57]

1. Mauritius' Geodetic Survey of Blenheim Reef

2.11 Since the filing of Mauritius' Memorial on 25 May 2021 and Maldives' Counter-Memorial on 25 November 2021, Mauritius has been able to carry out the first scientific survey of its territory in and around the Chagos Archipelago, including Peros Banhos Atoll, Salomon Islands Atoll, Blenheim Reef and appurtenant waters. This survey, which was carried out from 8 to 22 February (five days of which was spent at the Chagos Archipelago), included a detailed geodetic survey of Blenheim Reef. This was the first occasion on which Mauritius has been able to organise a visit to the Chagos Archipelago, which was illegally detached from the territory of Mauritius prior to its independence on 12 March 1968.

2.12 On the basis of documentary evidence available at the time of preparing the Memorial – including satellite imagery and nautical charts – Mauritius proceeded on the basis that Blenheim Reef was a low-tide elevation that measured approximately 6 M by 3 M and is located no more than 10.6 M northeast of Île Takamaka in Salomon Islands Atoll. This is not disputed by Maldives.[58]

2.13 As a result of the geodetic survey of Blenheim Reef – which appears to be the first on-site survey of that feature which has ever been carried out – Mauritius has been able to gather a great deal more detailed and verifiable information about Blenheim Reef. In particular, Mauritius has established that there are extensive areas of drying reef along the northern, eastern and western flanks of Blenheim Reef's seaward perimeter. The presence, nature and

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[54] *See* MM, para. 4.29 and Table 4.1; MCM, para. 149 and Table 2.

[55] *See* MM, para. 4.29 and Table 4.1.

[56] *See* MCM, para. 149 and Table 2 (MUS-BSE-10 to MUS-BSE-18).

[57] Chagos Archipelago: High-Tide Features Depicted on BA Admiralty Charts 3, 725, 726 and 727 (MR, Vol. III, Annex 4).

[58] MCM, para. 106.

extent of the drying reef was not previously known to Mauritius, and could not have been established in the absence of an on-site scientific investigation. As a consequence of the survey, the Parties and the Special Chamber now have available far more detailed and reliable evidence.

2.14 The findings of the geodetic survey are set out in the report of Ola Oskarsson and Thomas Mennerdahl at Annex 1 in Volume III. Those findings have been independently reviewed and confirmed by Dr. David Dodd, whose report is at Annex 2 in Volume III. The survey offers detailed evidence that Blenheim Reef covers an area of approximately 36 km^2, that it measures 9.6 km from north to south, and that at its widest point it measures approximately 4.7 km from east to west (see **Figure R2.1**).

2.15 Along the northeastern fringe of Blenheim Reef, at the point which is closest to Maldives, there are "many areas of drying sands and coral blocks" which are "easily visible" below highest tide. These "extensive patches" of drying reef become exposed at around Mean Sea Level and below.[59] In total, 70% of Blenheim Reef's 27.2 km circumference is "composed primarily of drying reefs."[60] Patches of drying reef can clearly be seen from drone imagery obtained during the survey (see **Figure R2.2** and **Figure R2.3**).

2.16 The extensive areas of drying reef consist primarily of "rocky coral beds and outcropping, with coral sand and large coral fragments scattered throughout their rugged surfaces."[61] There are also extensive areas of drying sands exposed at Mean Sea Level and below around the outermost perimeter of Blenheim Reef.[62] These can be seen in **Figure R2.2** and **Figure R2.3**.

2.17 These findings confirm that Blenheim Reef is not only a low-tide elevation within the meaning of Article 13 of the Convention, but that it is also a "drying reef" for the purposes of Article 47(1). This fact, which Mauritius was not able to ascertain with any degree of certainty at the time of preparing its Memorial, is confirmed by the geodetic survey. As explained in more detail below, the fact that Blenheim Reef is to be characterised as a drying reef within the meaning of Article 47 has legal consequences. In particular, such characterisation confirms: (i) the legal validity of Mauritius' claim to archipelagic baselines around the Chagos Archipelago; (ii) that Mauritius is entitled to rely on archipelagic base points placed on Blenheim Reef for the purposes of maritime delimitation; and (iii) that these archipelagic base points and the baselines so drawn are entitled to be given full effect, in accordance with Articles 47 and 48 of UNCLOS.

2.18 To be clear, Mauritius' position that Blenheim Reef may be characterised as a low-tide elevation for the purposes of Article 13 of the Convention has not changed. The Parties agree that Blenheim Reef is situated no more than 10.6 M from a high-tide feature (Île Takamaka in

[59] *Geodetic Survey of Blenheim Reef*, p. 5 (MR, Vol. III, Annex 1).

[60] *Ibid.*

[61] *Ibid.*

[62] *Ibid.*, p. 13. Mauritius has also obtained drone video footage which can be shown at the oral hearing.

Salomon Islands Atoll) and thus generates an entitlement to maritime zones pursuant to Article 13(1) of the Convention. Additionally, however, it is also a drying reef within the meaning of Article 47(1) of UNCLOS, which means that the special regime pertaining to archipelagic States under Part IV of the Convention is the proper legal basis for the location of base points, the drawing of baselines on and around Blenheim Reef, and the determination of the maritime entitlements that arise.

B. MALDIVES (ADDU ATOLL)

2.19 In contrast to the dispute over Mauritius' 4 base points on Blenheim Reef, there is no dispute between the Parties as to the location of Maldives' base points. Maldives agrees with the 41 base points identified in Mauritius' Memorial, which are all situated along the southern coast of Addu Atoll in Maldives.[63]

III. Part IV of UNCLOS: Special Regime for Archipelagic States

2.20 The discovery of extensive areas of drying reef extending to approximately 19 km of the circumference of Blenheim Reef (and most prevalent along the northern coast facing Maldives) has a significant impact on Blenheim Reef's legal status under the Convention and the maritime area it generates in the context of overlapping maritime entitlements.

2.21 As recognised by the Parties in the Memorial and the Counter-Memorial, Mauritius has declared itself as an archipelagic State under Part IV of the Convention. Article 47(1) of the Convention provides that an archipelagic State "may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago" provided that six conditions are met (which are addressed below). Prior to the geodetic survey, Mauritius would have been able to rely on Article 47(4), which allows for baselines to be drawn to low-tide elevations that are situated wholly or partly at a distance not exceeding 12 M from the nearest island. However, with the benefit of the findings of the geodetic survey, Mauritius can now confirm, with certainty, that Blenheim Reef is a "drying reef" within the meaning of Article 47(1) of the Convention.

2.22 The legal status of Blenheim Reef as a "drying reef" within the meaning of Article 47(1) needs to be understood against the backdrop of the special regime established by Part IV of the Convention and the relevant judicial and arbitral practice.

A. PART IV OF THE CONVENTION

2.23 Part IV of the Convention contains nine articles and "brings together the principal articles of the convention dedicated to the specific law of the sea issues that arise with

[63] MCM, para. 133 and Table 1.

SATELLITE IMAGE OF BLENHEIM REEF

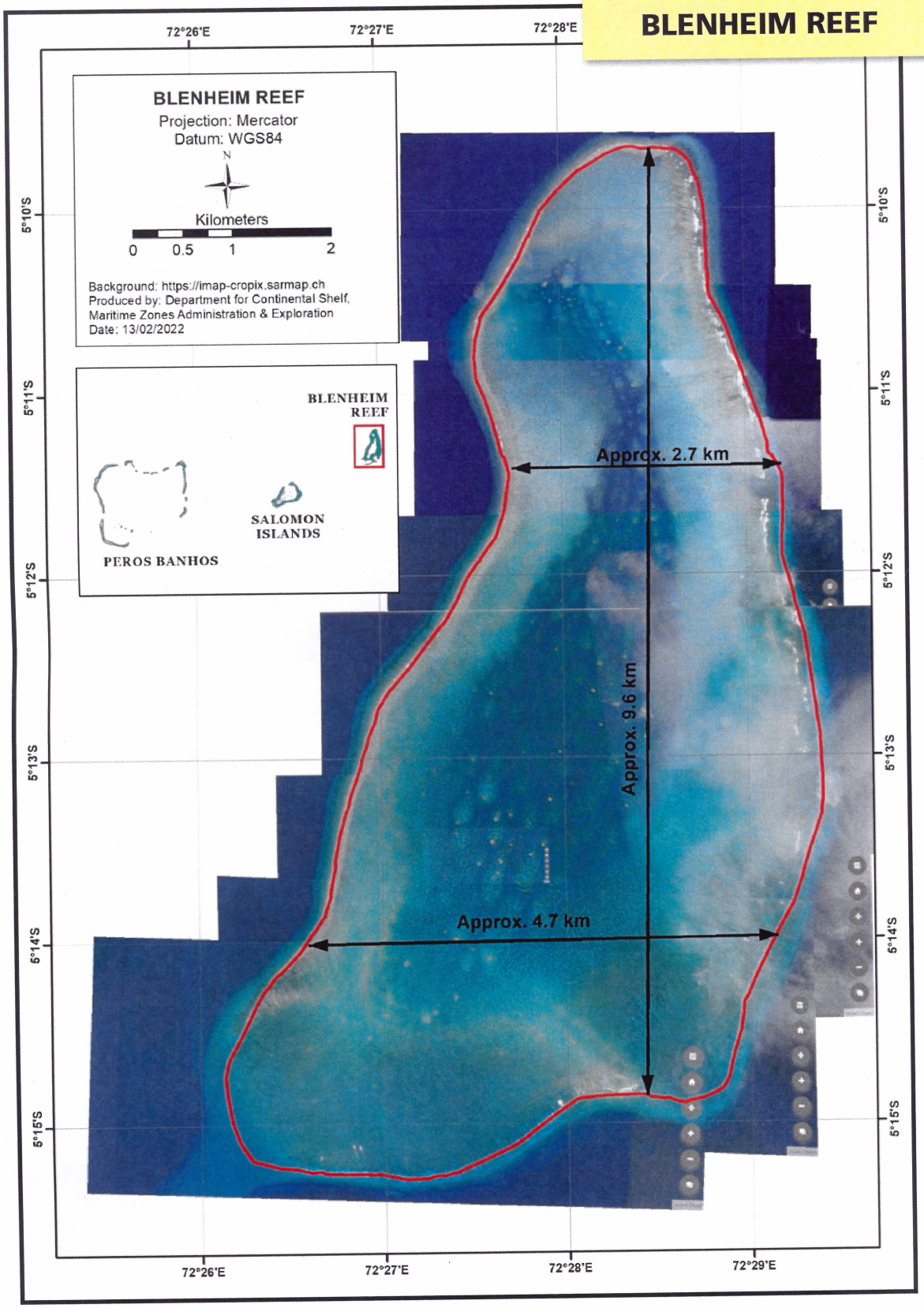
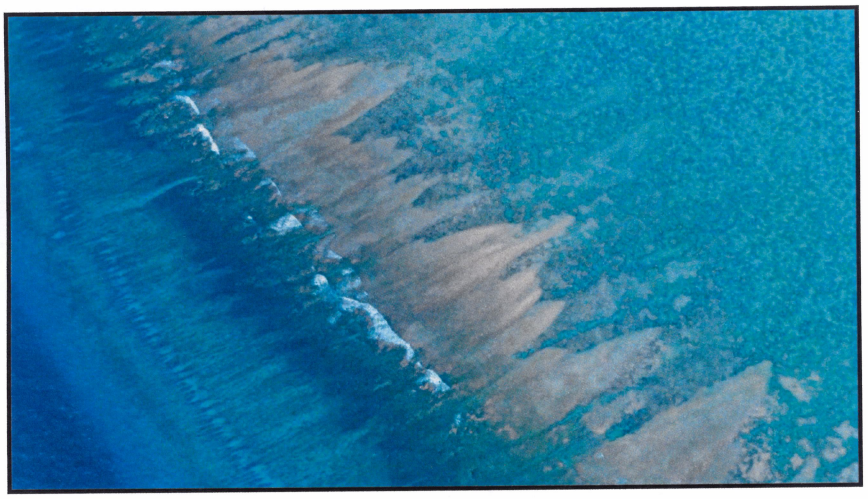


Figure R2.1

DRYING SANDS AND CORAL BLOCKS ALONG BLENHEIM REEF'S PERIMETER



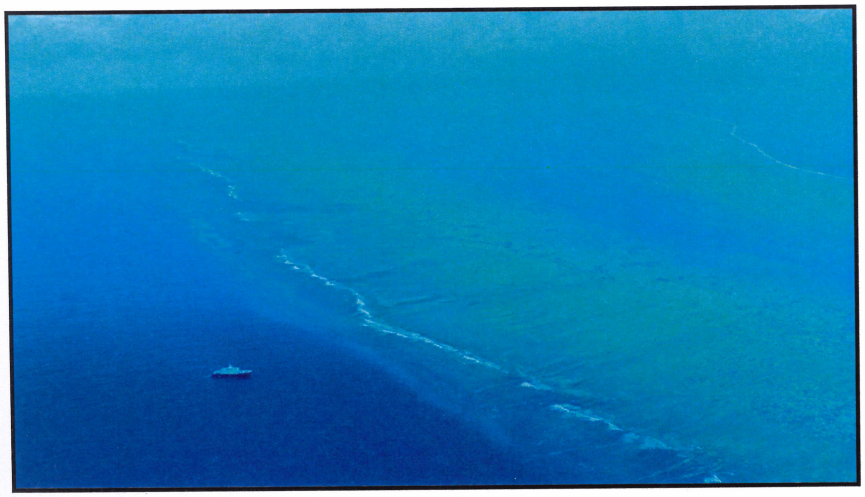


Figure R2.2

DRYING REEFS OBSERVED DURING SITE SURVEY OF BLENHEIM REEF

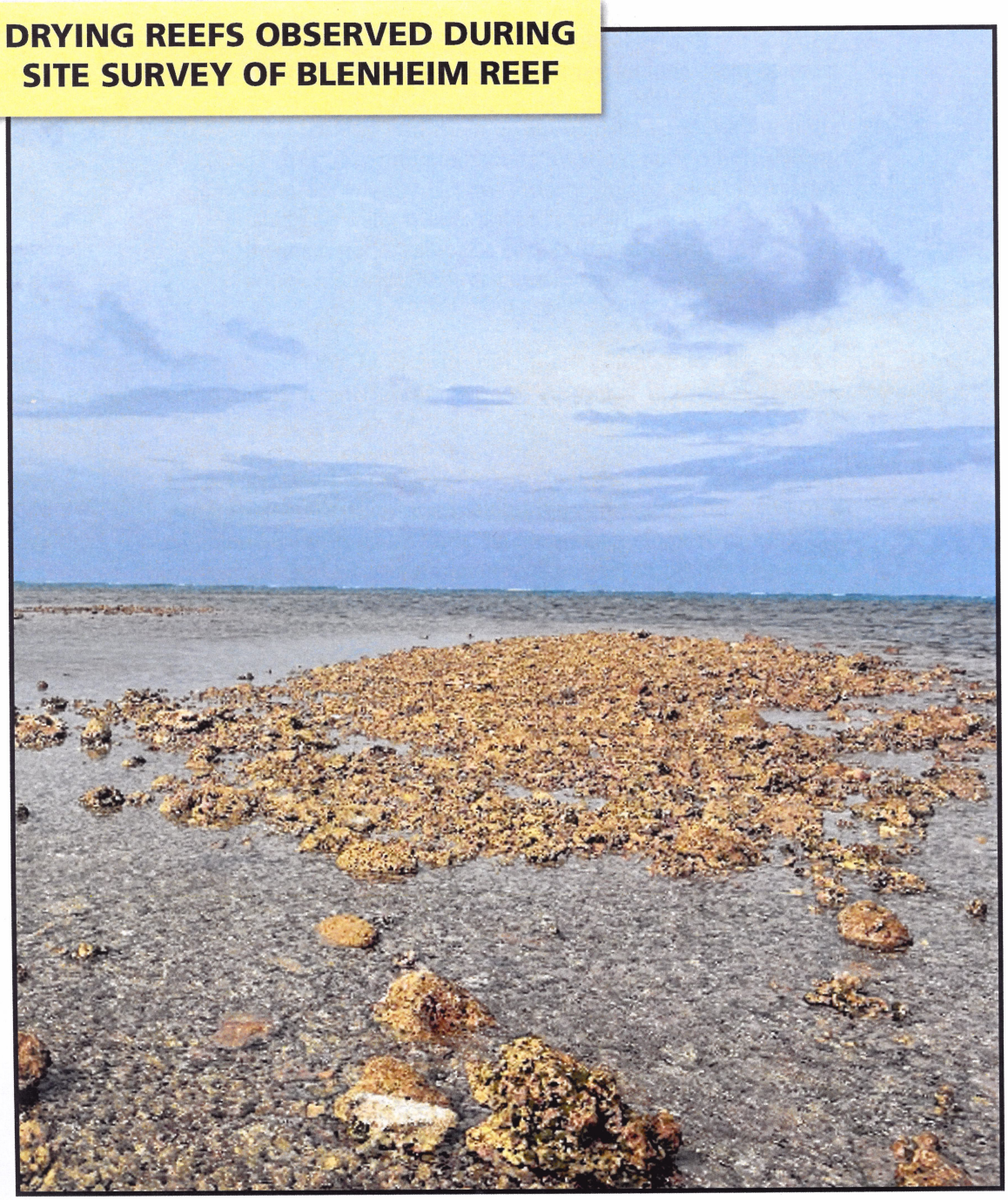


Figure R2.3

archipelagos."[64] Although Part IV cross-refers to other provisions of the Convention to a certain extent, it constitutes a "distinctive regime" for archipelagic States.[65]

2.24 The terms "archipelagic State" and "archipelago" are defined in the first provision under Part IV as follows:

> *Article 46*
>
> *Use of terms*
>
> For the purposes of this Convention:
>
> (a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;
>
> (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

2.25 Whereas Part IV of UNCLOS is in principle applicable to all "archipelagic States," it does not necessarily apply to all "archipelagos." As noted in the *UNCLOS Commentary* on Article 46:

> From a geographic perspective, archipelagos are found in several general situations: an archipelago may lie along the coast of a mainland or continental State; an archipelago may be an outlying or oceanic part of a continental State; and an archipelago may constitute all or part of a State that consists entirely of islands. Part IV is limited to a State which consists entirely of a group of islands (i.e., oceanic archipelagos), and all attempts to widen Part IV to embrace other types of archipelagos were not accepted by the Conference.[66]

2.26 As described in the Memorial, the Republic of Mauritius is made up entirely of islands:

a. the Island of Mauritius, located at longitude 57°30'E and latitude 20°00'S approximately 475 M east of Madagascar;

b. the islands of Cargados Carajos (comprising 16 islands and islets), 217 M to the north;

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[64] International Law Association, *Baselines under the International Law of the Sea: Final Report* (2018), para. 71 (hereinafter "ILA Final Report") (MR, Vol. III, Annex 6).

[65] *Ibid.*

[66] Nordquist, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. 1, p. 408 (hereinafter "UNCLOS Commentary").

c. Rodrigues Island, 302 M northeast;

d. Agalega, 504 M north;

e. Tromelin, 313 M northwest; and

f. the Chagos Archipelago, 1,188 M to the northeast.[67]

There can be no doubt, therefore, that Mauritius is an "archipelagic State" within the meaning of Article 46(a) of the Convention. This is uncontested.

2.27 With regard to the definition of "archipelago" in Article 46(b), the *UNCLOS Commentary* states that:

> Subparagraph (b) gives the meaning of "archipelago" in terms of the intrinsic linkage of the water to the land of the island State. Objective criteria for determining archipelagos, such as had been suggested by the U.K. in the Sea-Bed Committee, are incorporated in article 47. The effect is that a group of islands will come within the definition of an archipelago if it fits the criteria listed in article 46, subparagraph (b), but a State may not apply the concept of archipelagic waters to those islands unless it draws straight archipelagic baselines in accordance with the requirements of article 47. Conversely, a State is not entitled to draw archipelagic baselines unless it meets the criteria of article 46, subparagraphs (a) and (b). The fact that some baselines in an archipelago might exceed the lengths prescribed in article 47 does not prohibit the State from being an archipelagic State nor from enclosing as archipelagic waters those waters to which the objective criteria of article 47 can be applied. In such cases, the archipelagic State will be seen as consisting of one or more archipelagos, each with its own archipelagic waters, and perhaps one or more outlying islands subject to the usual rules governing the establishment of maritime zones for islands…[68]
>
> […]
>
> Subparagraph (b) allows a group of islands, the interconnecting waters and other natural features to be considered as an archipelago if one of two conditions is met: (1) they are so interrelated that they form an "intrinsic geographical, economic and political entity"; or (2) they "historically have been regarded as such." The antecedent reference for "such" is not clear in any of the authentic texts of the Convention. It could refer either to

[67] MM, paras. 2.4-2.6.

[68] UNCLOS Commentary, Vol. I, p. 413 (footnotes omitted).

"archipelago" or to "entity." Context and negotiating history, however, suggest the latter application.[69]

B. ARTICLE 47 OF THE CONVENTION: SIX OBJECTIVE CRITERIA

2.28 The "objective criteria" for the purposes of defining an archipelago falling within the scope of Article 46(b) are set out in Article 47 of the Convention, as follows:

> *Article 47*
>
> *Archipelagic baselines*
>
> 1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
>
> 2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
>
> 3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
>
> 4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
>
> 5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
>
> [...]
>
> 7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly

[69] *Ibid.*, p. 414.

enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

2.29 UNCLOS States parties – such as Mauritius – that meet the conditions of an "archipelagic State" within the meaning of Article 46(a) may exercise the right to draw archipelagic baselines in accordance with Article 47. Such archipelagic baselines – which, in accordance with Article 48, are to be relied upon for the purposes of a maritime delimitation – are subject to six requirements:

a. the baselines must include "the main islands" (Article 47(1));

b. the baselines must enclose an area of sea "in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1" (*i.e.*, the enclosed area of water must be at least as large as the area of enclosed land but must not be more than nine times that land area: Article 47(1));

c. none of the segments of the baselines may exceed 125 M in length and not more than 3% of baseline segments may exceed 100 M (Article 47(2));

d. the baselines must "not depart to any appreciable extent from the general configuration of the archipelago" (Article 47(3));

e. the baselines must not be drawn to and from low-tide elevations unless (i) lighthouses or similar installations have been built on them; or (ii) it is situated wholly or partly within the territorial sea of an island (Article 47(4)); and

f. the baselines must not cut off the territorial sea of another State from the high seas or the EEZ (Article 47(5)).

2.30 Mauritius and Maldives are two of the 22 UNCLOS States parties that have declared themselves to be archipelagic States, and which have given due publicity and deposited charts or lists of coordinates with the UN Secretary-General pursuant to Article 47(9) of the Convention.[70] Of these, 16 States parties that claim archipelagic baselines meet all of the requirements of Article 47, including Mauritius; 6 do not, including Maldives.[71]

C. MAURITIUS' ARCHIPELAGIC BASELINES

2.31 By its Maritime Zones Act 2005, Mauritius reaffirmed its 200 M EEZ and continental shelf, which had been declared by the earlier Maritime Zones Act 1977.[72] Pursuant to sections

[70] The 22 UNCLOS States parties are: Antigua and Barbuda, Bahamas, Cabo Verde, Comoros, Dominican Republic, Fiji, Grenada, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius (with respect of Cargados Carajos and the Chagos Archipelago), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu. Article 47(9) of the Convention states that: "[t]he archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

[71] *See* ILA Final Report, Appendix 3 (MR, Vol. III, Annex 6).

[72] *See* MM, para. 3.7-3.8.

4, 5 and 27 of the 2005 Act, on 5 August 2005 Mauritius promulgated the Maritime Zones (Baselines and Delineating Lines) Regulations 2005. The First Schedule of the 2005 Regulations sets out a table of WGS 84 geographic co-ordinates of base points making up the baselines from which the maritime zones of Mauritius are determined. With respect to the Chagos Archipelago, the location of 86 turning points are identified, in compliance with the requirements of Article 47 of the Convention.[73] Mauritius' archipelagic baselines around the Chagos Archipelago are depicted in **Figure R2.4**.

2.32 Mauritius' archipelagic baselines around the Chagos Archipelago have been given due publicity, and a list of coordinates and accompanying charts were deposited with the UN Secretary-General on 26 July 2006.[74] Five archipelagic base points are located along the northern coast of Peros Banhos Atoll (C74-C78) and three archipelagic base points are located at Blenheim Reef (C83-C85).[75]

2.33 In its Counter-Memorial, Maldives argues that Mauritius' archipelagic baselines around the Chagos Archipelago fail to meet the requirements of Article 47(3) of UNCLOS because they allegedly depart to an "appreciable extent from the general configuration of the archipelago."[76] For the reasons explained immediately below, this argument is unsustainable; Mauritius' archipelagic baselines meet all six objective criteria set out in Article 47.

1. The First Condition: "main islands"

2.34 Mauritius' archipelagic baselines include all of the "main islands" of the Chagos Archipelago. As noted by the International Law Association ("ILA") in its Final Report on *Baselines under the International Law of the Sea* (2018) ("Final Report"), the term "main islands" is "not defined in Article 47(1), though the islands must meet the Article 121 criteria."[77] The ILA Committee went on to note that:

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[73] UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *Law of the Sea Bulletin*, No. 67 (2008), p. 13, *available at* https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin67e.pdf (last accessed 13 April 2022).

[74] *Ibid.*, p. 13, footnote 1.

[75] Mauritius has become aware that point C85 was erroneously situated approximately 840 metres to the north of Blenheim Reef. For the purposes of depicting its archipelagic baselines with more precision, Mauritius is currently engaged in the process of replotting its archipelagic base points in the Chagos Archipelago. Adjustments to Mauritius' archipelagic base points are in the course of being promulgated by new Regulations made pursuant to the Maritime Zones Act 2005. In relation to Blenheim Reef, Mauritius anticipates that the four base points identified by the CARIS LOTS software for the purposes of this delimitation (MUS-BSE-10 to MUS-BSE-13 set out in Table 4.1 on p. 31 of Mauritius' Memorial) will be used for the construction of Mauritius' revised archipelagic baselines pursuant to Article 47 of the Convention. Such minor adjustments to Mauritius' archipelagic baselines will not have any effect on the present delimitation process because Mauritius has not relied on C85 for the construction of the provisional equidistance line (Mauritius instead relies on base points identified by the CARIS LOTS software and Maldives does not dispute this methodology).

[76] MCM, para. 35.

[77] ILA Final Report, para. 117 (MR, Vol. III, Annex 6).

> consistent with the widely varying geographic circumstances of archipelagic States, the term "main islands" should be interpreted flexibly to encompass the larger geographic islands, the more heavily populated islands, and the more economically significant islands. The main islands of an archipelagic State may therefore be of varying geographic size.[78]

2.35 The Chagos Archipelago is made up of more than 60 islands, banks and reefs, with a total land area of 52.07 km^2, of which Diego Garcia island makes up approximately 30.5 km^2 (*i.e.*, 58.6% of the total land area).[79] The next eight largest islands are Eagle Island (2.65 km^2), Île Lubine (2.34 km^2), Île Sudest (2.15 km^2), Île du Coin (1.31 km^2), Île Pierre (1.28 km^2), Île Boddam (1.2 km^2), Île Poule (0.93 km^2) and Île Diamant (0.9 km^2). All of these high-tide features fall within Mauritius' archipelagic baselines.

2.36 The features which Maldives argues should have been included within Mauritius' archipelagic baselines – Nelson's Island and the "Chagos Bank" – are plainly not to be treated as "main islands," however that term is interpreted.[80] Nelson's Island is only 0.32 km^2 in size, comprising just 0.6% of the total land area in the Chagos Archipelago.[81] Unlike the much larger high-tide features described in paragraph 2.35 above, there is no record of human habitation on Nelson's Island. As to the Great Chagos Bank, it contains no high-tide features (aside from those already included within Mauritius' archipelagic baselines and Nelson's Island). Nor are there any low-tide elevations which have been excluded upon which lighthouses have been built, or which are situated within 12 M of a high-tide feature. This much is evident from Maldives' own depiction of the Great Chagos Bank at Figure 3 on page 10 of its Counter-Memorial. On that basis, it cannot be argued that Mauritius' archipelagic baselines do not include the "main islands" for the purposes of Article 47(1).

2. *The second condition: land/water ratio*

2.37 The total area encompassed within Mauritius' archipelagic baselines is 7,388 km^2. This comprises 6,520 km^2 of water and 868 km^2 of land (including atolls as defined by Article 47(1)

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[78] *Ibid.*

[79] Chagos Archipelago: High-Tide Features Depicted on BA Admiralty Charts 3, 725, 726 and 727 (MR, Vol. III, Annex 4).

[80] *See* MCM, para. 35 ("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. 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.") (footnotes omitted).

[81] Chagos Archipelago: High-Tide Features Depicted on BA Admiralty Charts 3, 725, 726 and 727 (MR, Vol. III, Annex 4).

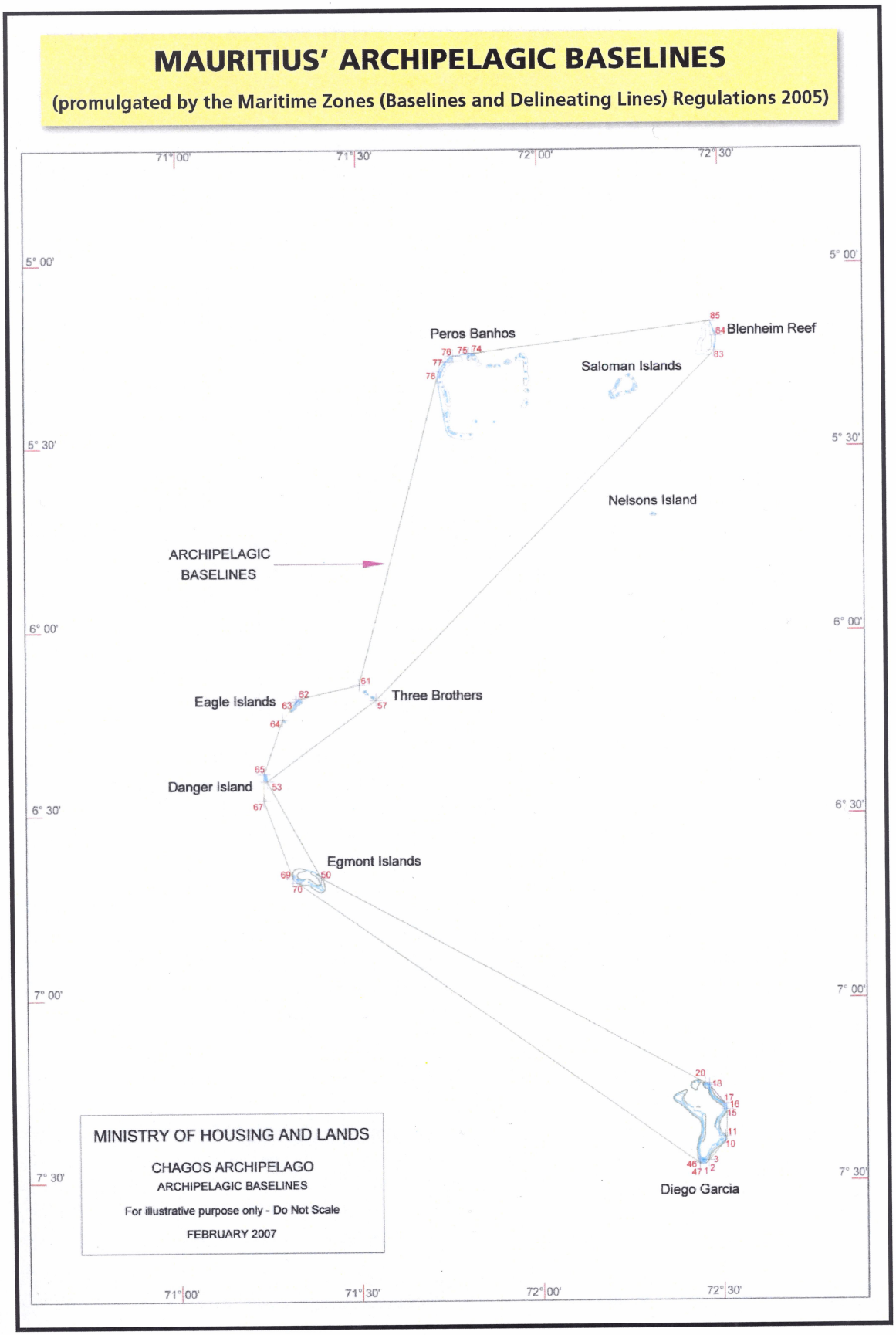
MAURITIUS' ARCHIPELAGIC BASELINES
(promulgated by the Maritime Zones (Baselines and Delineating Lines) Regulations 2005)
71° 00'
71° 30'
72° 00'
72° 30'
5° 00'
5° 30'
6° 00'
6° 30'
7° 00'
7° 30'
Peros Banhos
Blenheim Reef
Saloman Islands
Nelsons Island
ARCHIPELAGIC BASELINES
Eagle Islands
Three Brothers
Danger Island
Egmont Islands
Diego Garcia
MINISTRY OF HOUSING AND LANDS
CHAGOS ARCHIPELAGO
ARCHIPELAGIC BASELINES
For illustrative purpose only - Do Not Scale
FEBRUARY 2007

Figure R2.4

of the Convention).[82] The water-to-land ratio is therefore 7.5 to 1, well within the range of 1 to 1 and 9 to 1 mandated by Article 47(1).

3. The third condition: maximum length of baselines

2.38 None of Mauritius' archipelagic baselines around the Chagos Archipelago exceed 100 M in length. The longest segment, between turning points C46 and C70, is 80 M.

4. The fourth condition: "general configuration of the archipelago"

2.39 The fourth condition appears to be the only one which is disputed by Maldives.[83] In its Final Report, the ILA Committee noted that "appreciable extent" and "general configuration" are "more indeterminate and provide the archipelagic State with some capacity to apply those provisions consistently with its particular geographic circumstances."[84] The *UNCLOS Commentary* provides the following overview of the *travaux préparatoires* relating to the requirement in Article 47(3):

> Paragraph 3 requires that the drawing of straight archipelagic baselines "shall not depart" to any appreciable extent from the general configuration of the archipelago. The Drafting Committee suggested harmonizing the language of that requirement with article 7, paragraph 3, which provides that the baselines "must not depart" from the general direction of the coast. This was not accepted. In the English text there is little, if any, practical difference between "shall" and "must."
>
> Paragraph 3 does not include the requirement found in article 7, paragraph 3, that the sea areas lying within the lines must be sufficiently closely linked to the land domain.... By its nature, the regime created for archipelagic waters does not require this kind of provision.[85]

2.40 An archipelago is defined in Article 46(b) as "a group of *islands.*"[86] As explained above, the only high-tide feature falling outside of Mauritius' archipelagic baselines is Nelson's Island, which is a small rock within the meaning of Article 121(3), comprising no more than

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[82] US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas*, No. 140 (Mauritius) (July 2014), p. 4 (hereinafter "*Limits in the Seas* (Mauritius)") (MR, Vol. III, Annex 5).

[83] *See* MCM, para. 35 ("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. 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.") (footnotes omitted).

[84] ILA Final Report, para. 116 (MR, Vol. III, Annex 6).

[85] UNCLOS Commentary, Vol. I, p. 431 (footnotes omitted).

[86] Emphasis added.

0.6% of the total land area in the Chagos Archipelago and situated 19.7 M from the nearest island (Île Boddam). Nelson's Island lies only 11.2 M from segment C57-C83. The effect of excluding Nelson's Island has no appreciable or material effect on the general configuration of Mauritius' archipelagic baselines. Mauritius' archipelagic baselines encompass 99.4% of all the land area in the Chagos Archipelago. There is no requirement in Article 47 (or anywhere else in the Convention) that *every* high-tide feature must be included within a State's archipelagic baselines; Article 47(1) limits this requirement to the "main islands." For the reasons explained in paragraph 2.36 above, Nelson's Island is not a "main island." Its exclusion from the area encompassed by archipelagic baselines is entirely consistent with Article 47(1) and does not result in Mauritius' archipelagic baselines departing to any appreciable extent from the general configuration of the archipelago, as argued by Maldives.[87]

2.41 There are at least four other examples of archipelagic States excluding high-tide features from archipelagic baselines, all of which are significantly larger than Nelson's Island:

a. Kiribati's archipelagic baselines omit the island of Nikunau, which is 59 times larger than Nelson's Island and located around 22.6 M from Beru Atoll;

b. Papua New Guinea's archipelagic baselines exclude Wuvulu Island, which is 45 times larger than Nelson's island and located approximately 18 M from Aua Island;

c. Seychelles' archipelagic baselines omit Frégate Island, which is 6 times larger than Nelson's Island and located around 10 M from Île aux Recifs; and

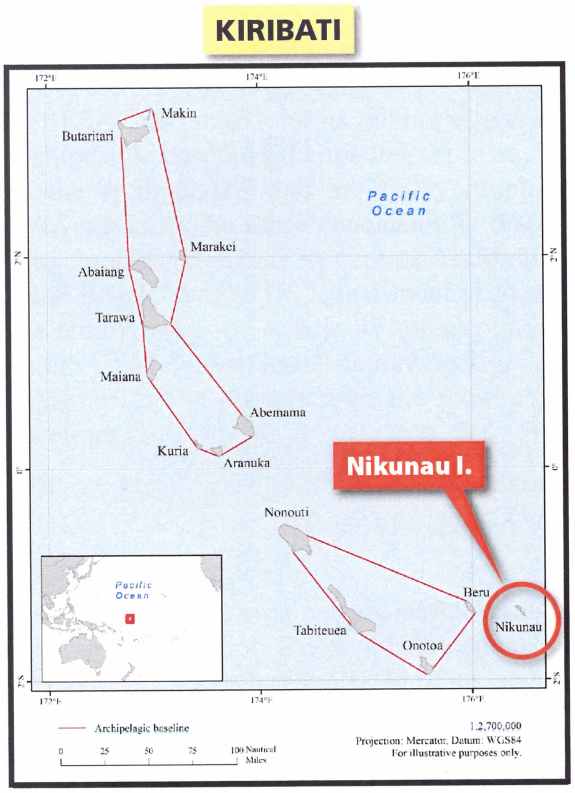
d. Tuvalu's archipelagic baselines exclude Vaitupu Island, which is 18 times larger than Nelson's Island and located around 31 M from Nukufetau Atoll.

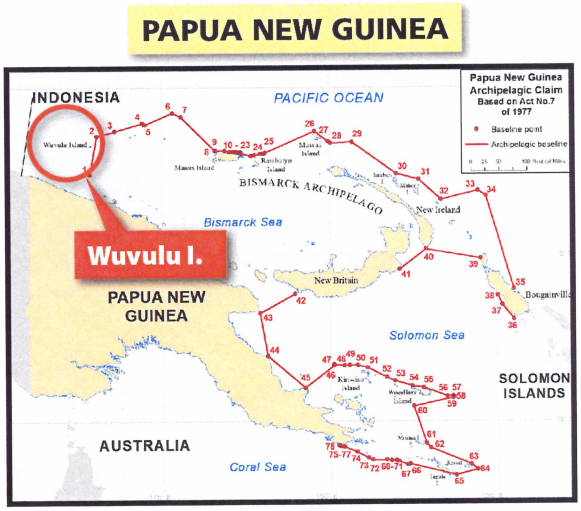
2.42 For all four of these examples – depicted in **Figure R2.5** – the US Department of State's Bureau of Oceans and International Environmental and Scientific Affairs ("BOIESA") has concluded that the archipelagic baselines do "not appear to depart to any appreciable extent from the general configuration of the archipelago."[88] All of the excluded high-tide features (Nikunau, Wuvulu, Frégate and Vaitupu) are significantly larger than Nelson's Island. Moreover, Nikunau Island and Vaitupu Island are located significantly further away from the nearest high-tide feature than Nelson's Island. For these reasons, there is no basis for Maldives' contention that Mauritius' archipelagic baselines do not conform with the requirement in Article 47(3) because they depart to an "appreciable extent" from the "general configuration" of the Chagos Archipelago.

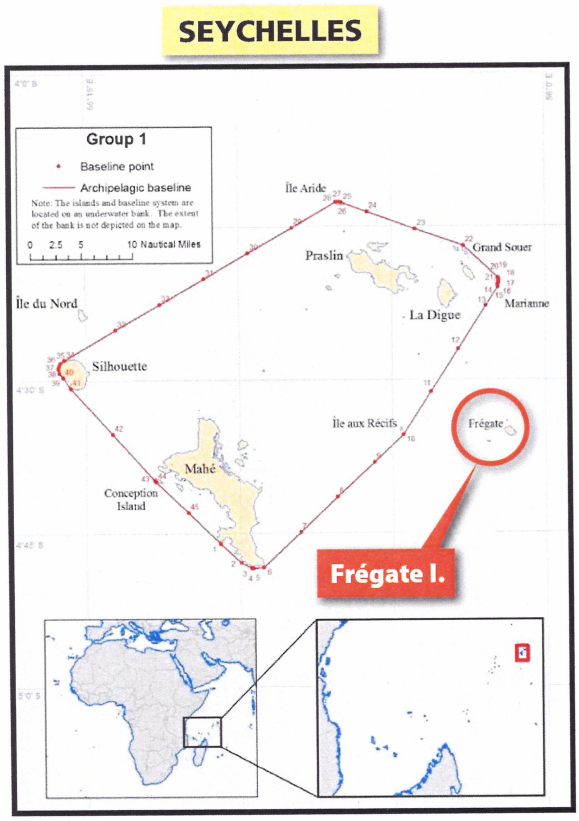
2.43 It is regrettable that Maldives seeks to challenge Mauritius' archipelagic baselines on the basis of a protest by the United States to the effect that Mauritius' baselines enclose "islands of the British Indian Ocean Territory, which are under the sovereignty of the United

[87] MCM, para. 35.

[88] US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas*, No. 146 (Kiribati) (5 March 2020), p. 5; No.136 (Papua New Guinea) (23 May 2014), p. 3; No. 132 (Seychelles) (14 February 2014), p. 3; and No. 139 (Tuvalu) (23 May 2014), p. 3. All of these publications are *available at* https://www.state.gov/limits-in-the-seas/ (last accessed 13 April 2022).


KIRIBATI
Makin
Butaritari
Marakei
Abaiang
Tarawa
Maiana
Abemama
Kuria
Aranuka
Nikunau I.
Nonouti
Beru
Nikunau
Tabiteuea
Onotoa
Pacific Ocean
Archipelagic baseline
1:2,700,000
Projection: Mercator. Datum: WGS84
For illustrative purposes only.


PAPUA NEW GUINEA
INDONESIA
PACIFIC OCEAN
Papua New Guinea Archipelagic Claim Based on Act No.7 of 1977
Baseline point
Archipelagic baseline
BISMARCK ARCHIPELAGO
New Ireland
Bismarck Sea
Wuvulu I.
PAPUA NEW GUINEA
New Britain
Bougainville
Solomon Sea
SOLOMON ISLANDS
AUSTRALIA
Coral Sea


SEYCHELLES
Group 1
Baseline point
Archipelagic baseline
Note: The islands and baseline system are located on an underwater bank. The extent of the bank is not depicted on the map.
0 2.5 5 10 Nautical Miles
Île Aride
Praslin
Grand Souer
Île du Nord
La Digue
Marianne
Silhouette
Île aux Récifs
Frégate
Mahé
Conception Island
Frégate I.

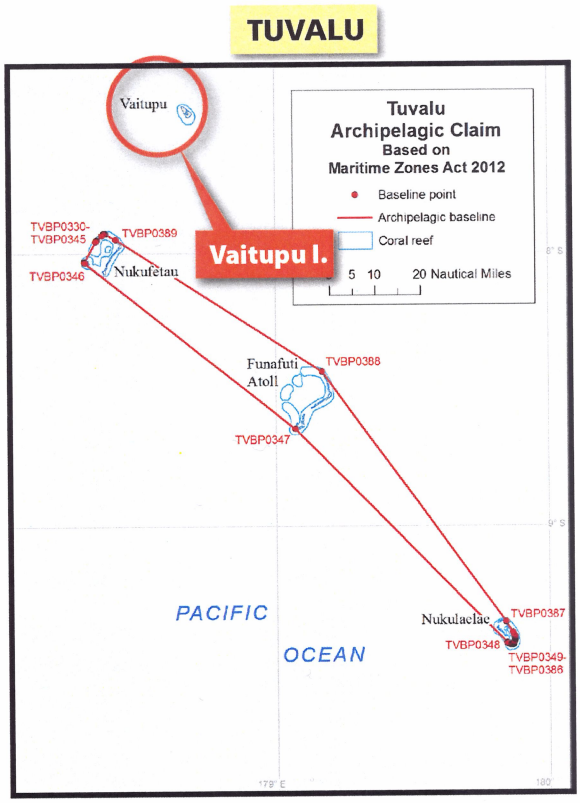

TUVALU
Vaitupu
Tuvalu Archipelagic Claim Based on Maritime Zones Act 2012
Baseline point
Archipelagic baseline
Coral reef
5 10 20 Nautical Miles
TVBP0330-TVBP0345
TVBP0389
TVBP0346
Nukufetau
Vaitupu I.
Funafuti Atoll
TVBP0388
TVBP0347
PACIFIC OCEAN
Nukulaelae
TVBP0387
TVBP0348
TVBP0349-TVBP0386

Figure R2.5

Kingdom."[89] The Judgment of the Special Chamber on Maldives' Preliminary Objections – which is binding on Maldives – puts an end to any argument that there exists a dispute relating to sovereignty over the Chagos Archipelago. In any event, the US Department of State's BOIESA has stated in its authoritative *Limits in the Seas* publication that Mauritius' archipelagic baselines do not "depart to any appreciable extent from the general configuration of the archipelago" and are fully compliant with the requirements of Article 47 of the Convention.[90] The same conclusion is reached by the ILA Committee in its Final Report.[91] This conclusion stands in contrast to Maldives' archipelagic baselines, which both the ILA Final Report and the US Department of State's *Limits in the Seas* have concluded do not meet the requirements of Article 47 on account of three baselines segments exceeding 100 M in length.[92] Maldives itself acknowledges, in the Counter-Memorial, that its archipelagic baselines fail to comply with the requirement in Article 47(2) on the maximum length of baselines.[93]

5. *The fifth condition: drying reefs and low-tide elevations*

2.44 Mauritius' archipelagic baselines comply with the requirements of Article 47(4) of UNCLOS in relation to low-tide elevations on account that no baselines have been drawn to low-tide elevations beyond 12 M of an island. The ILA Committee considered the question of whether an "island" for the purposes of Article 47(4) carries the same meaning as Article 121 of the Convention, or whether a mere "rock" falls within the definition. The Committee concluded that:

> an Article 121(3) rock would be considered to be an "island" for the purposes of Article 47 and accordingly could be relied upon for the drawing of straight archipelagic baselines, subject to the other controlling elements of Article 47 being applied.[94]

6. *The sixth condition: cut off*

2.45 At its closest point, Mauritius' archipelagic baselines are approximately 257 M from the limit of Maldives' territorial sea (no other State is located closer). It cannot be argued that Mauritius' archipelagic baselines have the effect of cutting off Maldives' territorial sea from the high seas or EEZ.

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[89] MCM, para. 35, footnote 74.

[90] *Limits in the Seas* (Mauritius), p. 5 (MR, Vol. III, Annex 5).

[91] ILA Final Report, Appendix 3 (MR, Vol. III, Annex 6).

[92] US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas*, No. 126 (Maldives), p. 3, *available at* https://www.state.gov/limits-in-the-seas/ (last accessed 13 April 2022); ILA Final Report, Appendix 3 (MR, Vol. III, Annex 6).

[93] MCM, para. 30.

[94] ILA Final Report, para. 86 (MR, Vol. III, Annex 6).

D. ARCHIPELAGIC STATES AND ARCHIPELAGIC BASELINES IN THE CONTEXT OF MARITIME DELIMITATION

2.46 It follows from the sub-section above that Mauritius' archipelagic baselines around the Chagos Archipelago comply with all of the requirements of Article 47. Mauritius is, therefore, entitled, pursuant to Article 47(1), to locate base points on the outermost points of Blenheim Reef for the construction of its archipelagic baselines, as it has done by the location of turning points C83, C84 and C85.[95]

2.47 In this regard, it is important to note that the Convention draws a distinction between low-tide elevations and drying reefs. Article 13(1) defines a low-tide elevation as "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide." The *UNCLOS Commentary* explains the distinction between a low-tide elevation and a drying reef as follows:

> The inclusion of the term "drying reefs" in paragraph 1 as turning points for straight archipelagic baselines was not controversial, having been included in proposals submitted to the Sea-Bed Committee... A "drying reef" is that part of a reef "which is above water at low tide but is submerged at high tide." On that basis, drying reefs are "low-tide elevations" within the meaning of article 13, and would be subject to the related requirement contained in article 47, paragraph 4...[96]

2.48 Whereas every drying reef is also a low-tide elevation within the meaning of Article 13(1), not every low-tide elevation is a drying reef within the meaning of Article 47(1). The distinction becomes significant when it comes to delimitation, as a drying reef that is located on a properly drawn archipelagic baseline is to be treated like other land having entitlements to a full maritime area. Blenheim Reef is not only a low-tide elevation within 12 M of an island, it is also a "drying reef" within the meaning of Article 47(1). This means that archipelagic base points at Blenheim Reef are expressly permissible, as are baselines drawn around Blenheim Reef, which are entitled to be given the fullest effect for the purpose of maritime delimitation. The full effect to be given to Blenheim Reef is evident from the terms of Article 48 of the Convention:

> *Article 48*
>
> *Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf*
>
> The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be

[95] *See* paragraph 2.31 above and the accompanying footnote.

[96] UNCLOS Commentary, Vol. I, p. 430 (footnote omitted).

measured from archipelagic baselines drawn in accordance with article 47.

2.49 Archipelagic baselines under Part IV of the Convention have been considered by international courts and tribunals on three occasions. In the first two cases (*Qatar v. Bahrain* and the *South China Sea Arbitration*), the ICJ and the UNCLOS Tribunal were not called upon to delimit any maritime boundary on the basis of archipelagic baselines.[97] In the *South China Sea Arbitration*, the Arbitral Tribunal confirmed that Part IV of the Convention establishes a separate and free-standing regime for the purposes of archipelagos, distinct from the rules contained in Part II of the Convention.[98] This is further confirmed by Article 49 of UNCLOS, under which archipelagos are treated as a single unit not subject to the same limitations as

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[97] In *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment of 16 March 2001, ICJ Reports 2001 (hereinafter "*Qatar v. Bahrain*"), Bahrain argued that although it had not deposited coordinates or charts with the UN Secretary-General under Article 47(9) of UNCLOS it was a "*de facto* archipelagic State" that was "entitled to declare itself an archipelagic State" under Part IV of the Convention. The Court observed that "Bahrain has not made this claim one of its formal submissions and that the Court is therefore not requested to take a position on this issue" (paras. 181 and 183).

[98] In the *South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award of 12 July 2016 (hereinafter "*South China Sea Arbitration*"), the Arbitral Tribunal considered whether statements made by China could be understood "as an assertion that the Spratly Islands should be enclosed within a system of archipelagic or straight baselines" (para. 573). The Tribunal noted that "[t]he use of archipelagic baselines ... is strictly controlled by the Convention, where Article 47(1) limits their use to 'archipelagic states'" (*ibid.*). The Tribunal held that China was not an "archipelagic State" for the purposes of Article 46(a) because it is "constituted principally by territory on the mainland of Asia" and that, in any event, the Philippines would not be able to declare archipelagic baselines because "[t]he ratio of water to land in the Spratly Islands would greatly exceed 9:1 under any conceivable system of baselines" (paras. 573-574). The Tribunal concluded that States cannot make use of straight baselines under Article 7 of the Convention in circumstances where they would otherwise fall foul of the conditions imposed by Article 47:

> The Convention also provides, in its Article 7, for States to make use of straight baselines under certain circumstances, and the Tribunal is aware of the practice of some States in employing straight baselines with respect to offshore archipelagos to approximate the effect of archipelagic baselines. In the Tribunal's view, any application of straight baselines to the Spratly Islands in this fashion would be contrary to the Convention. Article 7 provides for the application of straight baselines only "[i]n localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity." These conditions do not include the situation of an offshore archipelago. Although the Convention does not expressly preclude the use of straight baselines in other circumstances, the Tribunal considers that the grant of permission in Article 7 concerning straight baselines generally, together with the conditional permission in Articles 46 and 47 for certain States to draw archipelagic baselines, excludes the possibility of employing straight baselines in other circumstances, in particular with respect to offshore archipelagos not meeting the criteria for archipelagic baselines. Any other interpretation would effectively render the conditions in Articles 7 and 47 meaningless. (para. 575).

maritime zones established on the basis of normal baselines (Article 5) and straight baselines (Article 7).[99]

2.50 The only international judicial authority which considered a claim by an archipelagic State to rely on its archipelagic baselines to delimit overlapping maritime entitlements appears to be the Arbitral Tribunal in *Barbados v. Trinidad and Tobago*. In that case, the Tribunal adopted Trinidad and Tobago's archipelagic base points to construct the equidistance line. Trinidad and Tobago is an archipelagic State for the purposes of Article 46(a) of the Convention and has adopted archipelagic baselines which meet the requirements of Article 47 of the Convention.[100]

2.51 Whereas Trinidad and Tobago argued that "its archipelagic baselines can be counted as basepoints for the drawing of the equidistance line and other effects," Barbados asserted that "archipelagic basepoints cannot be used for calculating the equidistance line."[101] The Tribunal agreed with Trinidad and Tobago and constructed the provisional equidistance line on the basis of 11 base points located along the low water line of the coast of Barbados; and – particularly relevant for the purposes of this case – four base points located along archipelagic baselines of Trinidad and Tobago.[102] Trinidad and Tobago's four archipelagic base points (T1, T2, T3 and T4) were given full effect for the purposes of delimiting the maritime boundary between the two States (depicted in **Figure R2.6**).

2.52 On the basis of Article 48 of the Convention, confirmed by the approach of the Tribunal in *Barbados v. Trinidad and Tobago*, Blenheim Reef is entitled to full effect in the delimitation of overlapping maritime entitlements between the Parties. There can be no question as to the "appropriateness" of locating base points on Blenheim Reef: Mauritius is expressly entitled by Article 48 to measure the breadth of its EEZ and continental shelf from its archipelagic baselines drawn in accordance with Article 47. For the purposes of maritime entitlements up

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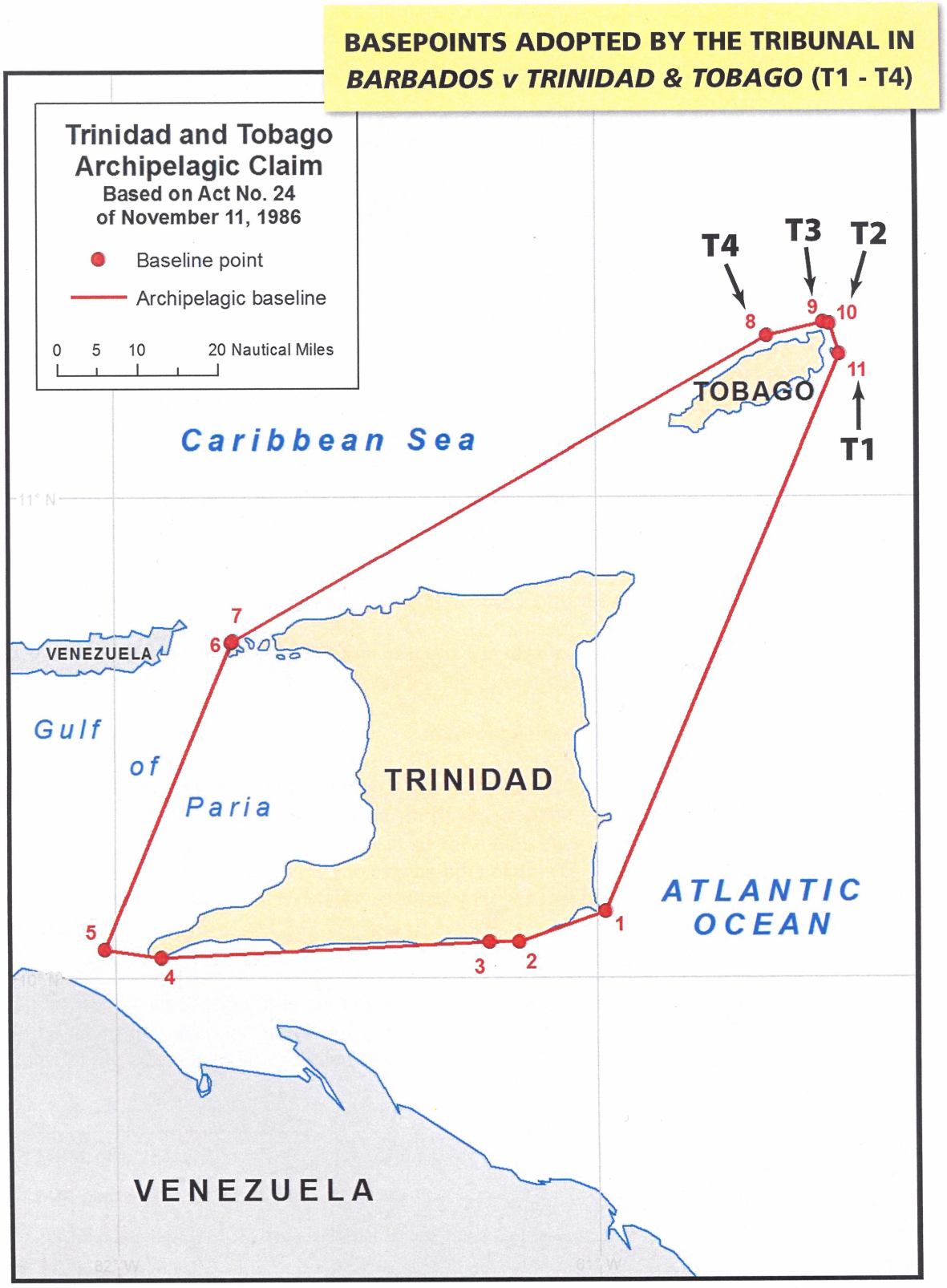
[99] Article 49 of UNCLOS provides:

> *Article 49*
>
> *Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil*
>
> 1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
> 2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
> 3. This sovereignty is exercised subject to this Part.
> 4. The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

[100] ILA Final Report, Appendix 3 (MR, Vol. III, Annex 6).

[101] *Barbados v. Trinidad and Tobago*, para. 333.

[102] *Barbados v. Trinidad and Tobago*, Technical Report of the Tribunal's Hydrographer, para. 2.



Source: U.S. State Department, Limits in the Seas No. 131, pg. 6.

Figure R2.6

to 200 M, the Convention treats an archipelagic baseline in exactly the same way as it would treat a normal baseline drawn (in conformity with Article 5) running along the low-water line of the coast.

IV. Delimitation Within 200 M

2.53 The Parties are in agreement on the method to be adopted by the Special Chamber in delimiting overlapping entitlements within 200 M. There are just three areas of dispute:

a. *At the first stage*: whether base points for the construction of the provisional equidistance line should be located on Blenheim Reef.

b. *At the second stage*: whether giving Blenheim Reef full effect in the delimitation within 200 M would result in – as Maldives puts it – "an extraordinarily disproportionate effect."[103]

c. *At the third stage*: the identification of the Parties' relevant coasts for the purposes of calculating proportionality (although as will be shown below, whichever of the Parties' positions the Special Chamber adopts, there would in any event be no disproportionality requiring adjustment of the delimitation line).

A. Stage 1: Provisional Equidistance Line

2.54 The Parties agree that the first stage is the drawing of a provisional equidistance line based on the Parties' relevant coasts and the identification of base points.[104]

1. Relevant Coasts

2.55 Both Parties cite with approval the dicta in the *Black Sea* case that in order to be considered "relevant" for delimitation purposes, a coast "must generate projections which overlap with projections from the coast of the other Party."[105] This is because "the task of delimitation consists in resolving the overlapping claims by drawing a line of separation of the maritime areas concerned."[106] Maldives acknowledges that this is common ground between the Parties.[107]

2.56 At the same time, it is not necessarily the "whole of the coast of each Party" that falls to be taken into account; parts of the coast which "cannot overlap with the extension of the coast of the other, is to be excluded from further consideration."[108]

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[103] MCM, para. 152.

[104] MM, para. 4.20-4.31; MCM, paras. 119-150.

[105] *See* MM, para. 4.23; MCM, para. 120 (both citing *Black Sea* case, para. 99).

[106] *Nicaragua v. Colombia*, para. 141; *Black Sea* case, para. 77.

[107] MCM, para. 123.

[108] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, ICJ Reports 1982, para. 75; *Nicaragua v. Colombia*, para. 150.

(a) Relevant coast of Maldives

2.57 The Parties' depictions of the relevant coast of Maldives are set out in **Figure R2.7**.

2.58 Maldives asserts that "[a]ll the southern coasts of Addu Atoll, as well as the southern coast of Fuvahmulah" are part of Maldives' relevant coast because these "generate projections overlapping with projections from the coast of the Chagos Archipelago."[109] As such, Maldives seeks to extend the length of its relevant coast by 43%, from 27.4 km depicted in Figure 4.3 of Mauritius' Memorial to 39.2 km as shown in Figure 20 of Maldives' Counter-Memorial. However, Maldives' extended coastal frontage does not comply with judicial practice.

2.59 In relation to Addu Atoll, the extensions at Hithadhoo (in the north east) and between Mulikolhu and Hulhumeedho (in the north west) are impermissible because these parts of the coast face away from the Chagos Archipelago and thus do not create any overlapping projections. These extended areas are depicted in **Figure R2.8**.

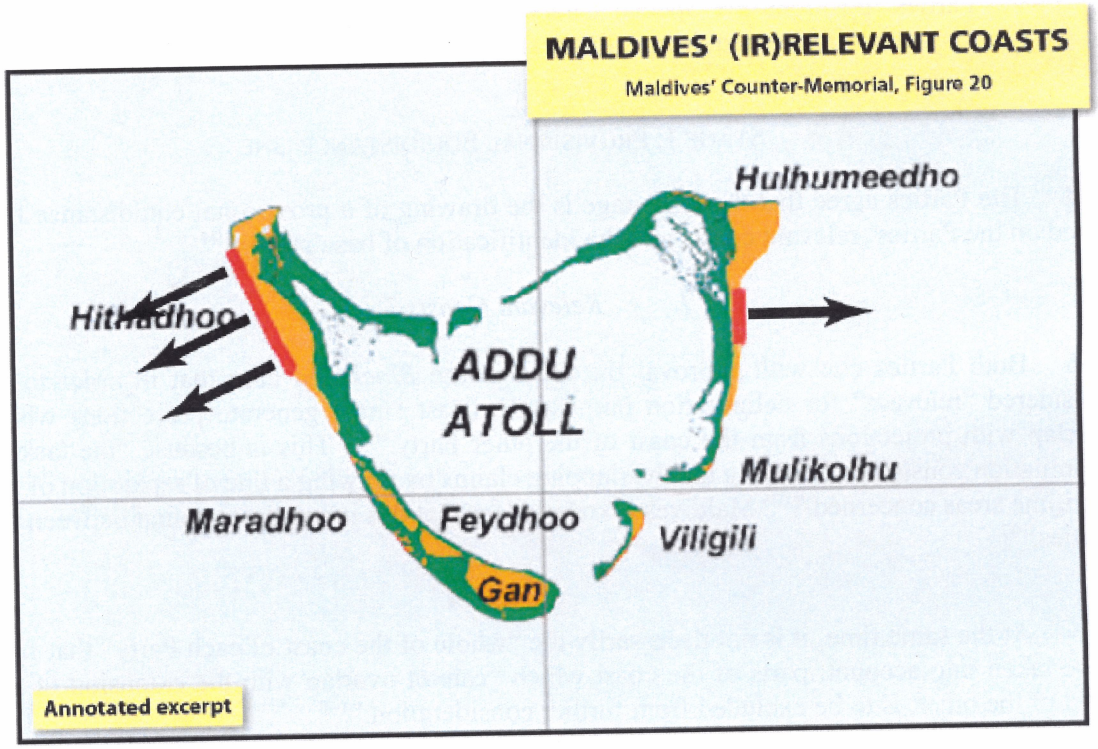

Figure R2.8

2.60 In *Nicaragua v. Colombia* the ICJ treated as relevant the entirety of Nicaragua's east-facing mainland coast, but excluded a stretch of coast near Punta de Perlas because this was facing southwards "and thus does not project into the area of overlapping potential entitlements."[110] In the *Black Sea* case, the Court again stressed that a coast is only relevant in

[109] MCM, para. 124.

[110] *Nicaragua v. Colombia*, para. 145.

FIGURE 4.3 FROM MAURITIUS' MEMORIAL

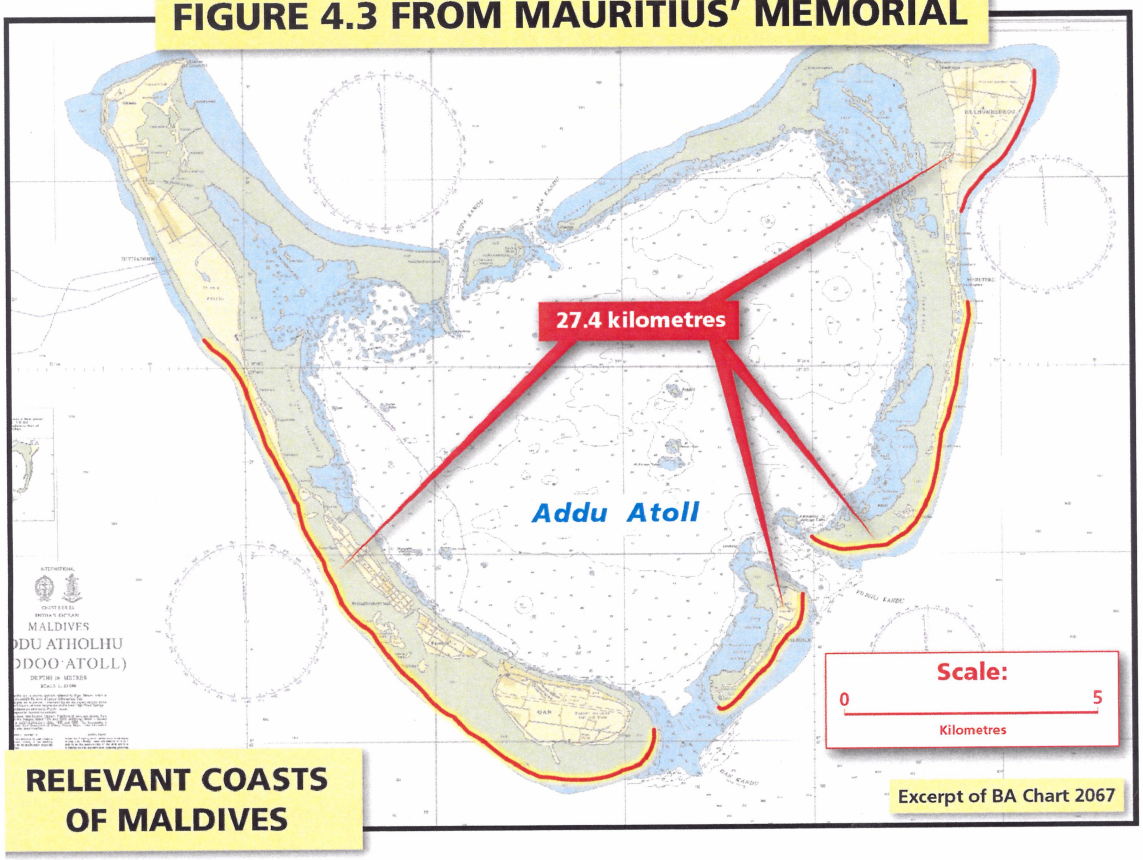

FIGURE 20 FROM MALDIVES' COUNTER-MEMORIAL

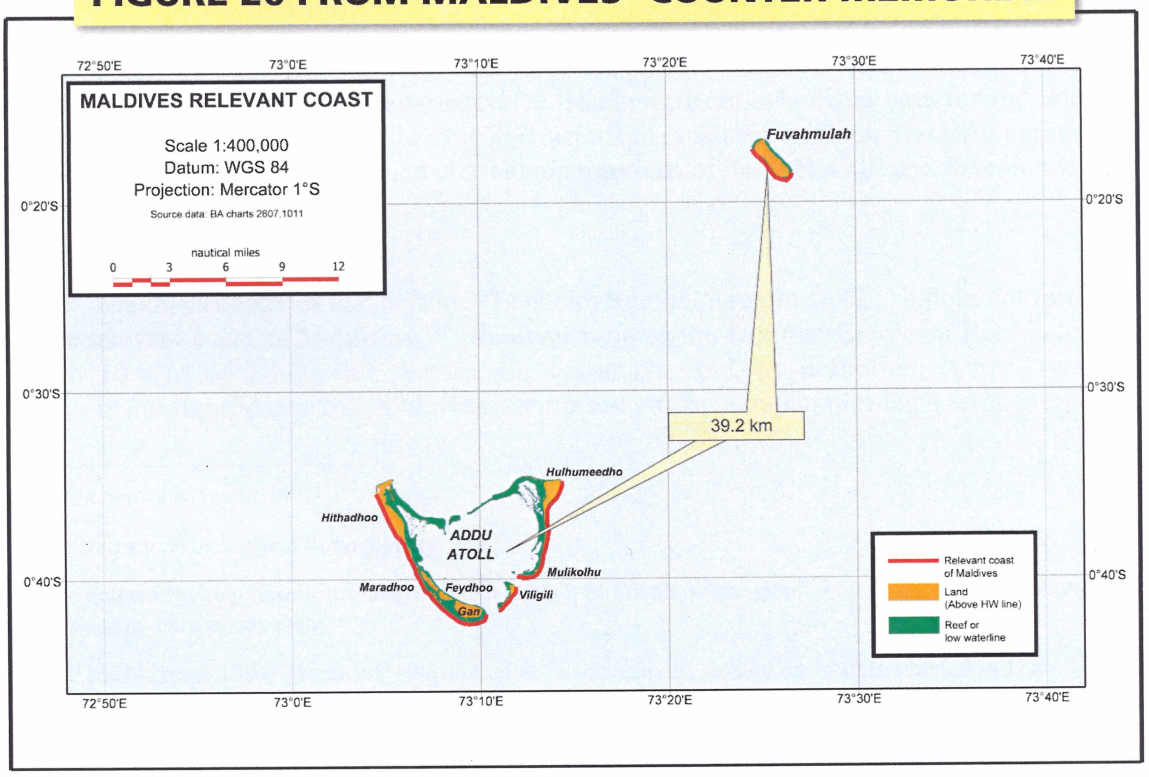

Figure R2.7

so far as it "faces the area to be delimited."[111] The Tribunal in *Barbados v. Trinidad and Tobago* recalled that relevant coasts must "abut as a whole upon the disputed area by a radial or directional presence relevant to the delimitation."[112] Adopting the same approach here, the extended areas sought by Maldives in Addu Atoll do not face or abut upon the area to be delimited and, therefore, fall outside the scope of relevant coast.

2.61 As to Fuvahmulah, large parts of its coastline face in a westerly direction away from the area to be delimited. Again, these areas do not generate overlapping projections with Mauritius. Moreover, Fuvahmulah is set back from the area to be delimited to a significant extent, lying 19.7 M to the northeast of Addu Atoll. It does not abut on the disputed area. As can be seen from Figure 19 in Maldives' Counter-Memorial (reproduced as **Figure R2.9a**), the overlapping projection created by the very small portion of Fuvahmulah's coast (depicted in red) is entirely subsumed within the coastal projection generated by Addu Atoll (depicted in blue). As such, Fuvahmulah, to the extent that a very small part of its coastline faces toward the Chagos Archipelago, does not add anything to Maldives' coastal projections and therefore cannot be considered part of the relevant coast.[113]

2.62 For these reasons, Mauritius maintains that the relevant coast of Maldives is as depicted in Figure 4.3 in the Memorial, such that Maldives' relevant coast extends to 27.4 km along the southern-facing coast of Addu Atoll.

(b) Relevant coast of Mauritius

2.63 The Parties' depictions of the relevant coast of Mauritius are set out in **Figure R2.10**.

2.64 There is only one point of difference between the Parties as to Mauritius' relevant coast. Maldives argues that Blenheim Reef does not form part of Mauritius' relevant coast because it is a low-tide elevation. As an alternative to Blenheim Reef, Maldives opts for the northern coastline of Nelson's island. Aside from this dispute over Blenheim Reef, Maldives agrees with Mauritius' depiction of the relevant coast along the coast of Peros Banhos and Salomon Islands Atoll.[114]

2.65 Maldives contends that because Blenheim Reef is "a remote LTE," it does not form part of the relevant coast of Mauritius.[115] Maldives ignores the fact that Blenheim Reef is located within 10.6 M of a high-tide feature, Île Takamaka, and, by definition, is not "remote," whatever the significance that Maldives attempts to attribute to that non-legal term. Because it

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[111] *Black Sea* case, para. 100.

[112] *Barbados v. Trinidad and Tobago*, para. 331.

[113] It is noteworthy that despite arguing for the inclusion of Fuvahmulah within its relevant coast, Maldives does not locate any base points there.

[114] *See* MCM, para. 130 ("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)").

[115] MCM, paras. 114, 127-130.

lies within 10.6 M of Île Takamaka, Blenheim Reef cannot be erased from Mauritius' relevant coast. Moreover, Blenheim Reef is now proven to be a drying reef within the meaning of Article 47(1) of the Convention and falls within Mauritius' archipelagic baselines. The special regime established by Part IV of the Convention accords drying reefs within archipelagic baselines *full* entitlement to an EEZ and continental shelf.

2.66 Maldives' reliance on the *South China Sea Arbitration* is entirely misplaced. That case was not about maritime delimitation, and the passage quoted by Maldives at paragraph 127 of its Counter-Memorial refers to the *appropriation* of low-tide elevations, not the maritime entitlements generated by drying reefs within archipelagic baselines.[116]

2.67 Maldives' use of Nelson's Island for the determination of Mauritius' relevant coast should be discounted for the same reasons set out in paragraph 2.61 above relating to Fuvahmulah. Nelson's Island is set back from the area to be delimited, located 19.7 M to the south of Salomon Islands Atoll. As can be seen from **Figure R2.9b**, to the limited extent that the north-facing coast of Nelson's Island generates a projection (depicted in red), this is entirely subsumed within that generated by Peros Banhos Atoll and Salomon Islands Atoll (depicted in blue).

2.68 For these reasons, Mauritius maintains that its relevant coast is as depicted in Figure 4.2 of its Memorial, extending to 46.8 km along the coast of Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef.

2. *Identification of Base Points*

2.69 As noted above, the dispute between the Parties as to the location of base points extends only to the 4 base points Mauritius has placed on Blenheim Reef (MUS-BSE-10 to MUS-BSE-13 set out in Table 4.1 on page 31 of Mauritius' Memorial).

2.70 In the *Black Sea* case, the ICJ stipulated that an equidistance line is "to be constructed from the most appropriate points on the coasts of the two States concerned, with particular attention being paid to those protuberant coastal points situated nearest to the area to [be] delimited."[117] In this regard, the appropriate points are those "which mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines."[118]

2.71 Both Parties have used the CARIS LOTS software for the identification of base points in the Chagos Archipelago. The Parties agree on the location of the 9 base points Mauritius has located on the northeastern coast of Peros Banhos Atoll and all 41 base points located along

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[116] *See* MCM, para. 127, quoting the *South China Sea Arbitration*, para. 309.

[117] *Black Sea* case, para. 117.

[118] *Ibid.*, para. 127.

FIGURE 19 FROM MALDIVES' COUNTER-MEMORIAL

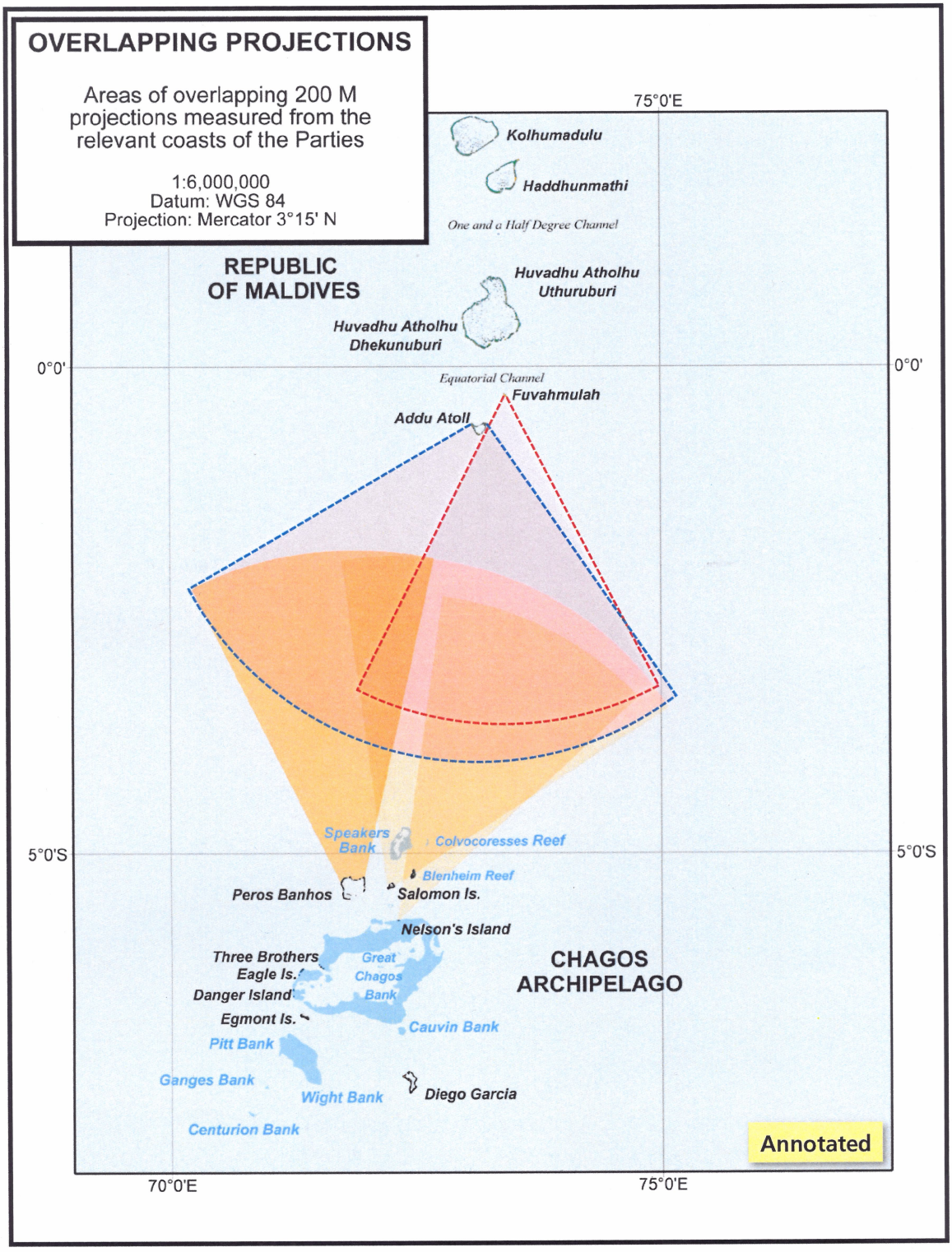

Figure R2.9a

FIGURE 19 FROM MALDIVES' COUNTER-MEMORIAL

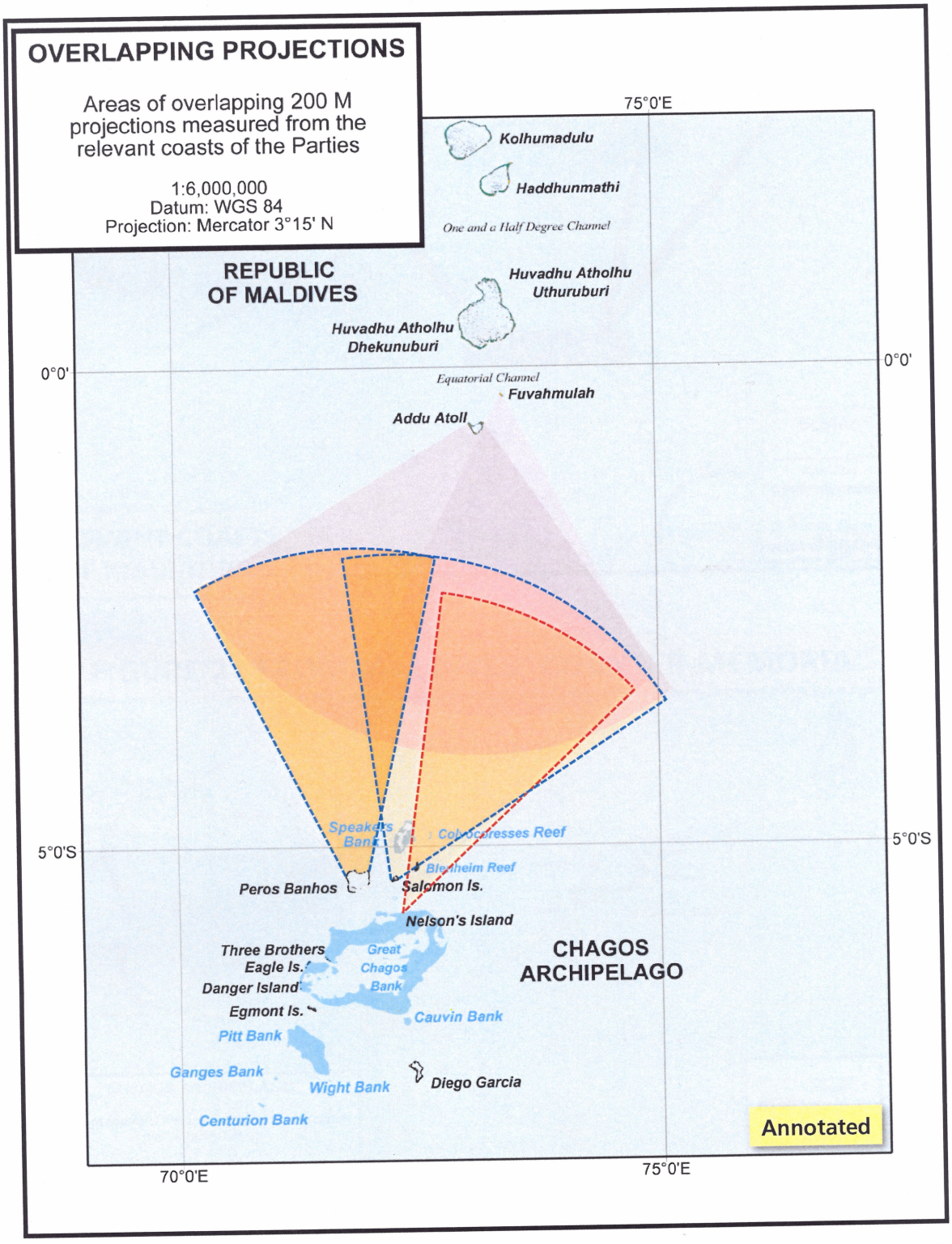

Figure R2.9b

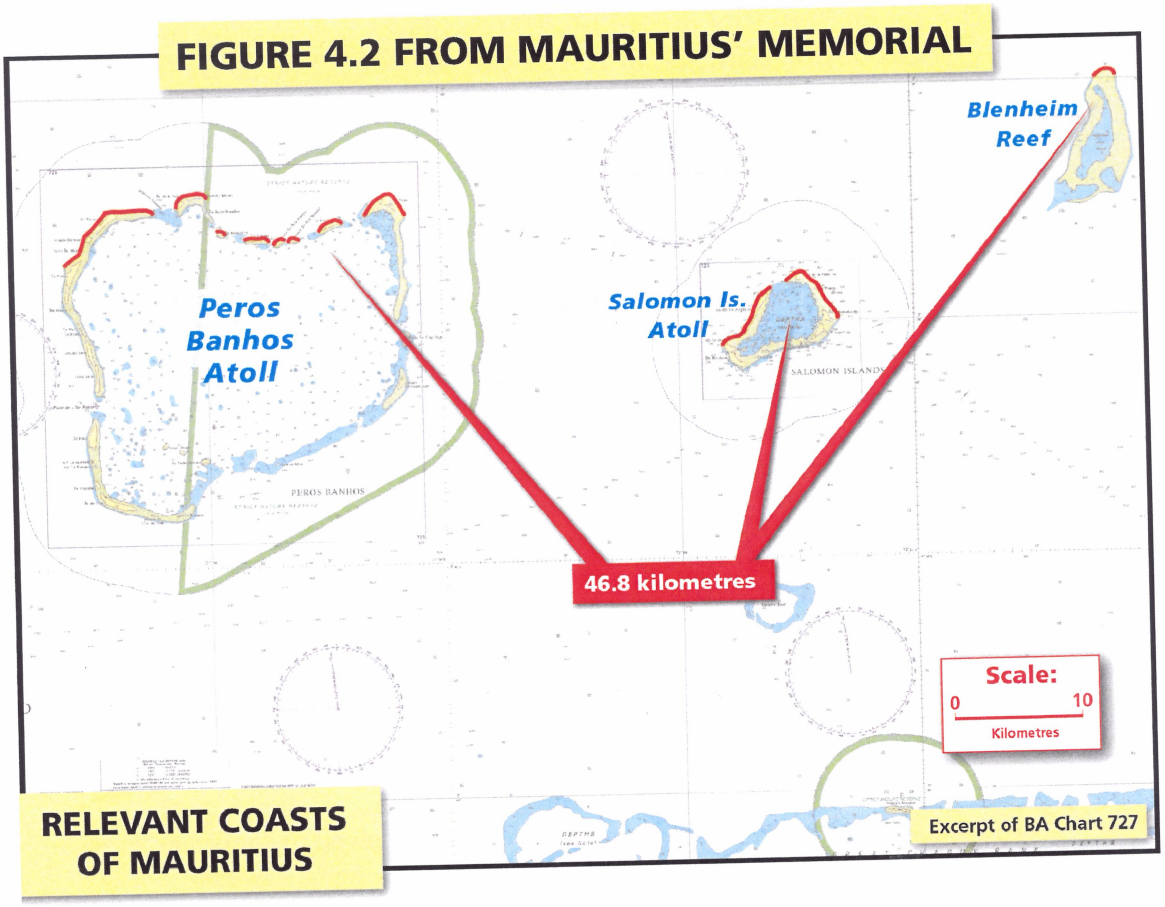
FIGURE 4.2 FROM MAURITIUS' MEMORIAL
Blenheim Reef
Peros Banhos Atoll
Salomon Is. Atoll
46.8 kilometres
Scale:
0
10
Kilometres
RELEVANT COASTS OF MAURITIUS
Excerpt of BA Chart 727

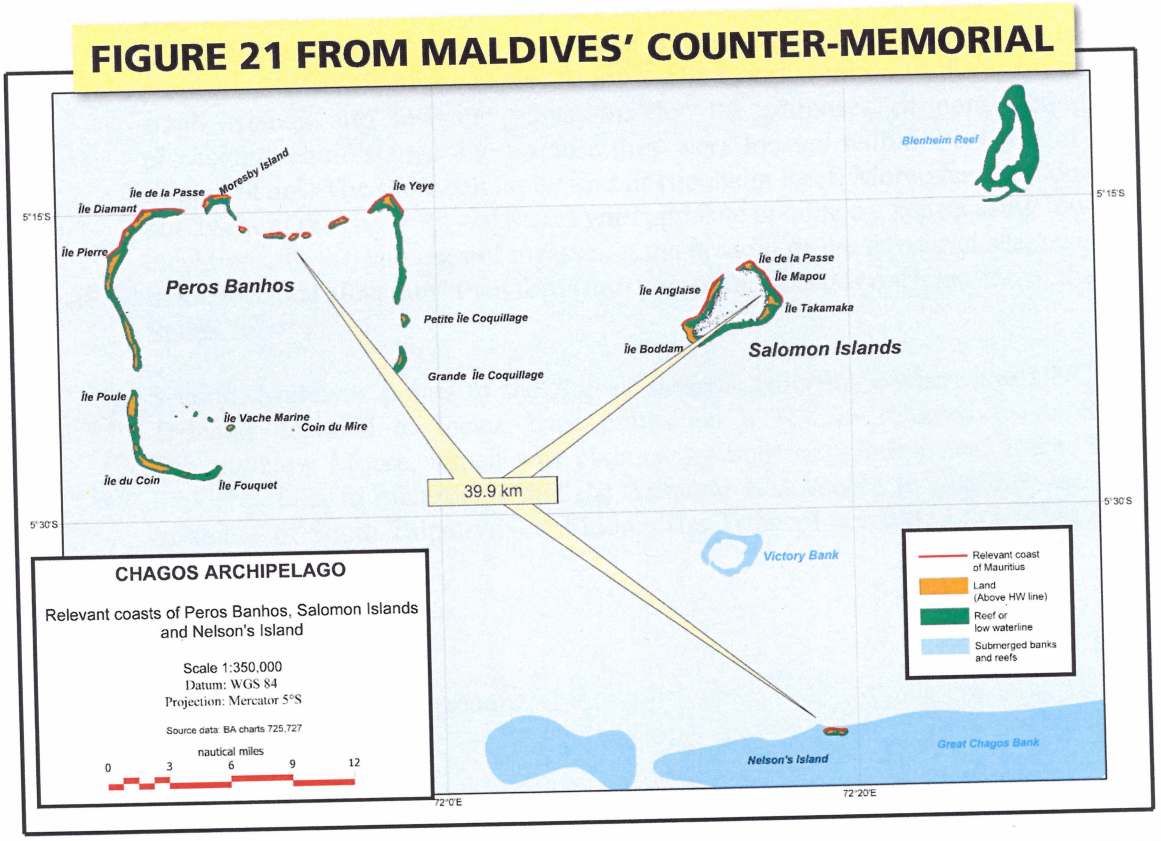
FIGURE 21 FROM MALDIVES' COUNTER-MEMORIAL
Blenheim Reef
Île de la Passe
Moresby Island
Île Yeye
Île Diamant
Île Pierre
Peros Banhos
Petite Île Coquillage
Grande Île Coquillage
Île Poule
Île Vache Marine
Coin du Mire
Île du Coin
Île Fouquet
Île de la Passe
Île Mapou
Île Anglaise
Île Takamaka
Île Boddam
Salomon Islands
39.9 km
Victory Bank
Great Chagos Bank
Nelson's Island
5°15'S
5°30'S
72°0'E
72°20'E
CHAGOS ARCHIPELAGO
Relevant coasts of Peros Banhos, Salomon Islands and Nelson's Island
Scale 1:350,000
Datum: WGS 84
Projection: Mercator 5°S
Source data: BA charts 725,727
nautical miles
0
3
6
9
12
Relevant coast of Mauritius
Land (Above HW line)
Reef or low waterline
Submerged banks and reefs

Figure R2.10

the coastline of Addu Atoll in Maldives (MUS-BSE-01 to MUS-BSE-09 and MDV-BSE-01 to MDV-BSE-41 set out in Table 4.1 on pages 31-32 of Mauritius' Memorial).

2.72 Maldives' sole objection with regard to the location of base points is that "Blenheim Reef is not appropriate for locating base points for the purposes of delimitation."[119] This argument is premised on the notion that Blenheim Reef is a low-tide elevation that is "not part of any island."[120] However, for the reasons explained in paragraph 2.52 above, Maldives is wrong. As a low-tide elevation lying with 10.6 M of a high-tide feature, Blenheim Reef is a suitable feature for the placement of coastal base points. Furthermore, any argument as to the "appropriateness" of Blenheim Reef is rendered moot by the findings of the geodetic survey recently carried out, and the legal status of Blenheim Reef as a drying reef. By virtue of Article 47(1) of the Convention an archipelagic State is entitled to draw archipelagic baselines joining the outermost points of drying reefs. Article 48 expressly grants Blenheim Reef entitlement to the full extent of the EEZ and continental shelf. Part IV of the Convention (and indeed all other Parts) contain no "appropriateness" requirement.

2.73 In any event, there is no merit to the argument that Blenheim Reef is "inappropriate" by reason of it being a low-tide elevation. Maldives relies on three authorities to support this proposition, all of which are readily distinguishable from the present case.

a. First, Maldives' reliance on *Qatar v. Bahrain* is misplaced because the "decisive question" to be determined by the Court in relation to Fasht al Azm was "whether a State can *acquire sovereignty by appropriation* over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of another State."[121] The Court noted that – unlike in this case – neither Qatar nor Bahrain are archipelagic States for the purposes of Part IV of the Convention.[122] The Court went on to disregard certain small islands and low-tide elevations for the purposes of constructing the provisional equidistance line because they were located within the 12 M of *both* litigant States. The same cannot be said of Blenheim Reef. Moreover, the Court did not discount the possibility of States with opposite or adjacent coasts using low-tide elevations for the purposes of measuring the breadth of the territorial sea, resulting in the low-tide elevation "then form[ing] part of the coastal configuration of the two States."[123]

b. Second, Maldives points to the *Bay of Bengal Arbitration* where the UNCLOS Tribunal declined to locate base points on a feature referred to as South Talpatty/New Moore, which was claimed by both Bangladesh and India. What Maldives fails to mention is that the Tribunal was unable to establish the very existence of South Talpatty/New Moore. The Tribunal noted that following a site

[119] *See* MCM, paras. 135-148.

[120] *Ibid.*, para. 142.

[121] *Qatar v. Bahrain*, para. 204 (emphasis added).

[122] *Ibid.*, paras. 181-183, 214-215.

[123] *Ibid.*, para. 202.

visit "it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation."[124]

c. Third, Maldives' reliance on *Somalia v. Kenya* is equally unfounded. The Court noted that the presence of low-tide features that Somalia sought to rely on – like South Talpatty/New Moore – "have not been confirmed by a field visit."[125]

2.74 These authorities plainly do not assist Maldives in this case. None of the low-tide features in question bear any resemblance, in law and in fact, to Blenheim Reef. In none of these three cases was the Court or Tribunal being asked to determine a claim by an archipelagic State to rely on base points located on a drying reef within archipelagic baselines.

2.75 Maldives makes the point that it is not aware of 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."[126] However, it is equally true that there is no judicial authority to the effect that base points *cannot* be located on a low-tide elevation. To the contrary, in the only case where an archipelagic State has sought to rely on its archipelagic baselines for the purposes of delimiting overlapping maritime entitlements (*Barbados v. Trinidad and Tobago*), the Tribunal gave full effect to Trinidad and Tobago's archipelagic base points.

2.76 An additional – and somewhat regrettable – argument advanced by Maldives is that the United Kingdom did not seek to use Blenheim Reef for the location of base points in its negotiations for a maritime boundary between the "British Indian Ocean Territory" and Maldives.[127] In its Judgment on Preliminary Objections, the Special Chamber ruled that it is "inconceivable" that the United Kingdom "can have any legal interest in permanently disposing of maritime zones around the Chagos Archipelago by delimitation."[128] In these circumstances, it is difficult to see how Maldives can seek to bind Mauritius to the negotiating position adopted by a third State which has been determined by an international tribunal to have no legal interest in the Chagos Archipelago.

2.77 For these reasons, Mauritius maintains that it is entitled, as a matter of law pursuant to Articles 47 and 48 of the Convention, to locate 4 basepoints on Blenheim Reef (MUS-BSE-10 to MUS-BSE-13 set out in Table 4.1 at page 31 of Mauritius' Memorial).

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[124] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India (Bangladesh v. India)*, PCA Case No. 2010-16, Award of 7 July 2014, para. 263.

[125] *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment of 12 October 2021, para. 113.

[126] MCM, para. 138.

[127] *Ibid.*, paras. 42, 45.

[128] Preliminary Objections Judgment, para. 247.

B. STAGE 2: RELEVANT CIRCUMSTANCES

2.78 The second step of the delimitation process is to "consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result."[129]

2.79 As described in its Memorial, Mauritius' proposed equidistance line allows for the Parties' opposite coasts to produce their effects, in terms of maritime entitlement, in a reasonable and mutually balanced fashion. Neither Party is cut-off from its maritime entitlements to any significant degree.[130] Nothing in Maldives' Counter-Memorial alters Mauritius' view in this regard.

2.80 Maldives agrees that there are no relevant circumstances justifying adjustment of the provisional equidistance line, save that it contends that if base points are located on Blenheim Reef, this would result in an "extraordinarily disproportionate effect" requiring southward adjustment of the delimitation line (although notably Maldives does not specify precisely what this adjustment should be).[131]

2.81 Giving Blenheim Reef full effect (as advanced by Mauritius), as opposed to no effect at all (as contended by Maldives), results in a difference of approximately 4,690 km^2, depicted in yellow in **Figure R2.11**.[132]

2.82 Mauritius calculates the area of overlapping entitlements within 200 M (*i.e.*, "the relevant area") to be 95,600 km^2.[133] Giving full effect to Blenheim Reef therefore impacts only 4.9% of the relevant area. The findings of Mauritius' geodetic survey reveal that Blenheim Reef (which covers 36 km^2) features drying reefs along 70% of its 27.2 km circumference. There is nothing disproportionate about such a significant feature giving rise to an entitlement for Mauritius of approximately 4,690 km^2.

2.83 It should be noted that Maldives calculates the relevant area to be only 86,319 km^2.[134] This difference is presumably due to Maldives' excluding Blenheim Reef from Mauritius' 200 M entitlement, despite the fact that Article 48 of the Convention expressly states that the breadth of the EEZ and continental shelf "shall be measured from archipelagic baselines drawn in accordance with article 47." For that reason, Mauritius does not accept Maldives' calculation of the relevant area. However, for the sake of argument, even if the Special Chamber adopts Maldives' depiction of the relevant area, *quod non*, the "additional 4,690 km^2 of maritime area" generated by Blenheim Reef amounts to just 5.4% of the relevant area as calculated by

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[129] *Black Sea* case, para. 120. *See also* MM paras. 4.32-4.38.

[130] *Ibid.*, para. 4.38.

[131] MCM, para. 152.

[132] Mauritius calculates the area of difference to be 4,694.4 km^2.

[133] MM, para. 4.44 and Figure 4.7.

[134] MCM, para. 156 and Figure 27.

Maldives.[135] Therefore, however the relevant area is calculated, it cannot by any measure be argued that giving Blenheim Reef full effect results in an "extraordinarily disproportionate effect" or, indeed, *any* disproportionate effect requiring adjustment of the provisional equidistance line.

C. STAGE 3: NO DISPROPORTIONALITY

2.84 At the third stage, consideration is given to whether the provisional equidistance line "lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue."[136] This is not an exercise of "splitting the difference" between the Parties, or "other mathematical approaches or use [of] ratio methodologies that would entail attributing to one Party what as a matter of law might belong to the other."[137] The purpose of this stage is not to ensure a proportionate result but rather to provide a final check against a disproportion that is so great as to render the proposed delimitation inequitable.[138]

2.85 The Parties agree that the Special Chamber should carry out this exercise by comparing the ratio of the lengths of the relevant coasts with the ratio of the maritime area to be delimited attributed by the delimitation line.

2.86 As explained in paragraphs 2.55 to 2.68 above, there is a dispute between the Parties as to the relevant coasts. For the reasons set out therein, Mauritius maintains that its depiction of the relevant coasts in Figures 4.2 and 4.3 of its Memorial best accord with judicial and arbitral practice. However, the disagreement over relevant coasts is moot for the purposes of the third stage: whichever relevant coastal length the Special Chamber ultimately adopts (whether Mauritius' position or that of Maldives), the delimitation line proposed by Mauritius results in no disproportionality.

2.87 Adopting the relevant coasts as depicted by Mauritius, the ratio is 1.71:1 in favour of Mauritius. The delimitation line proposed by Mauritius attributes 48,458 km^2 (50.69%) to Mauritius and 47,142 km^2 (49.31%) to Maldives.[139] This results in a ratio of 1.03 to 1 in favour of Mauritius. There is no disproportionality, and certainly no gross disproportionality of the kind that would require adjustment of the delimitation line.

2.88 In the alternative, if the Special Chamber adopts Maldives' depiction of the relevant coasts, *quod non*, the ratio of relevant coasts would be 1.02 to 1 in favour of Mauritius.[140] Bearing in mind that Mauritius' proposed delimitation line results in a ratio of relevant

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[135] *Ibid.*, paras. 9, 152.

[136] *Black Sea* case, para. 210.

[137] *Barbados v. Trinidad and Tobago*, para. 338.

[138] *Black Sea* case, para. 122.

[139] MM, para. 4.45.

[140] MCM, para. 155.

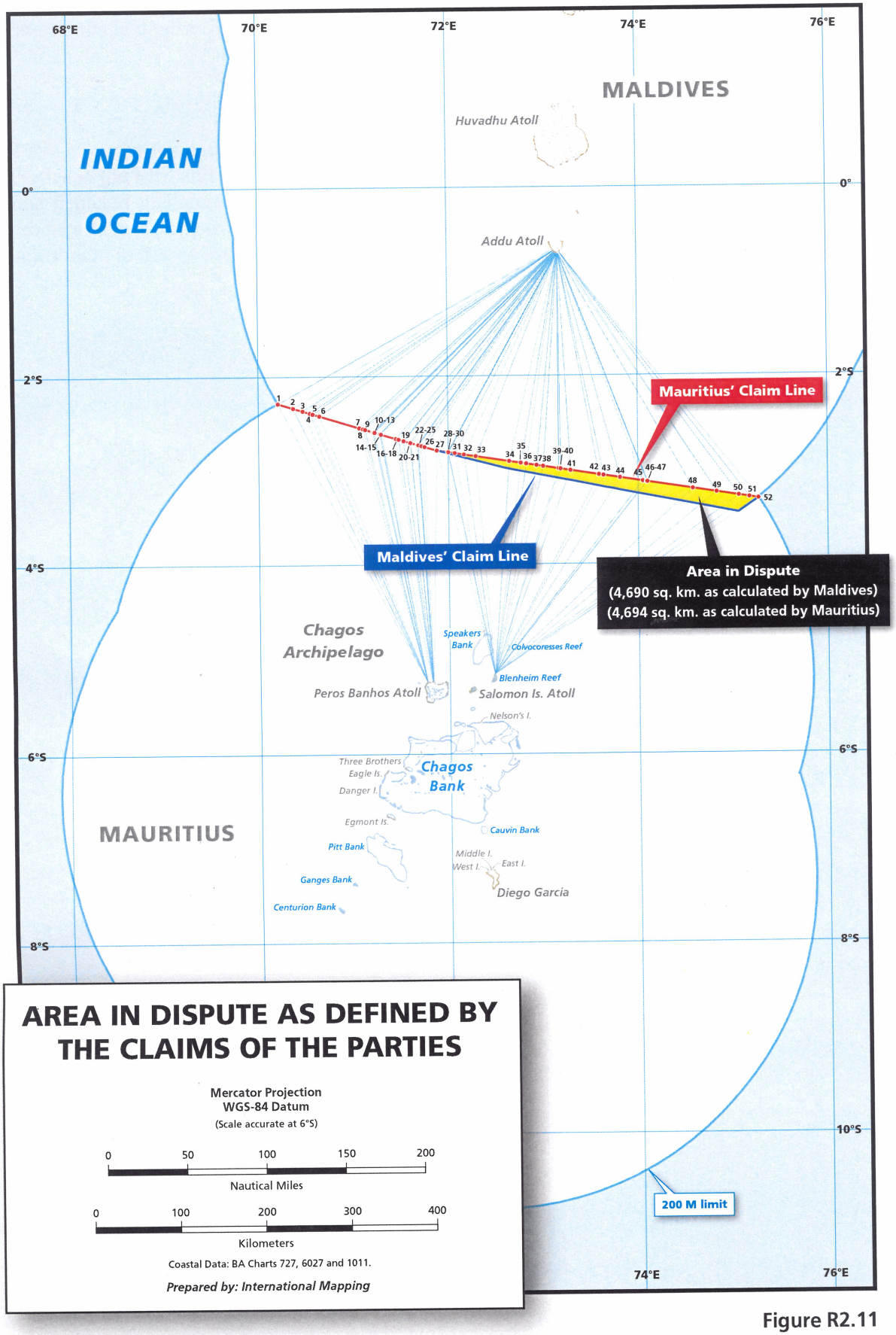
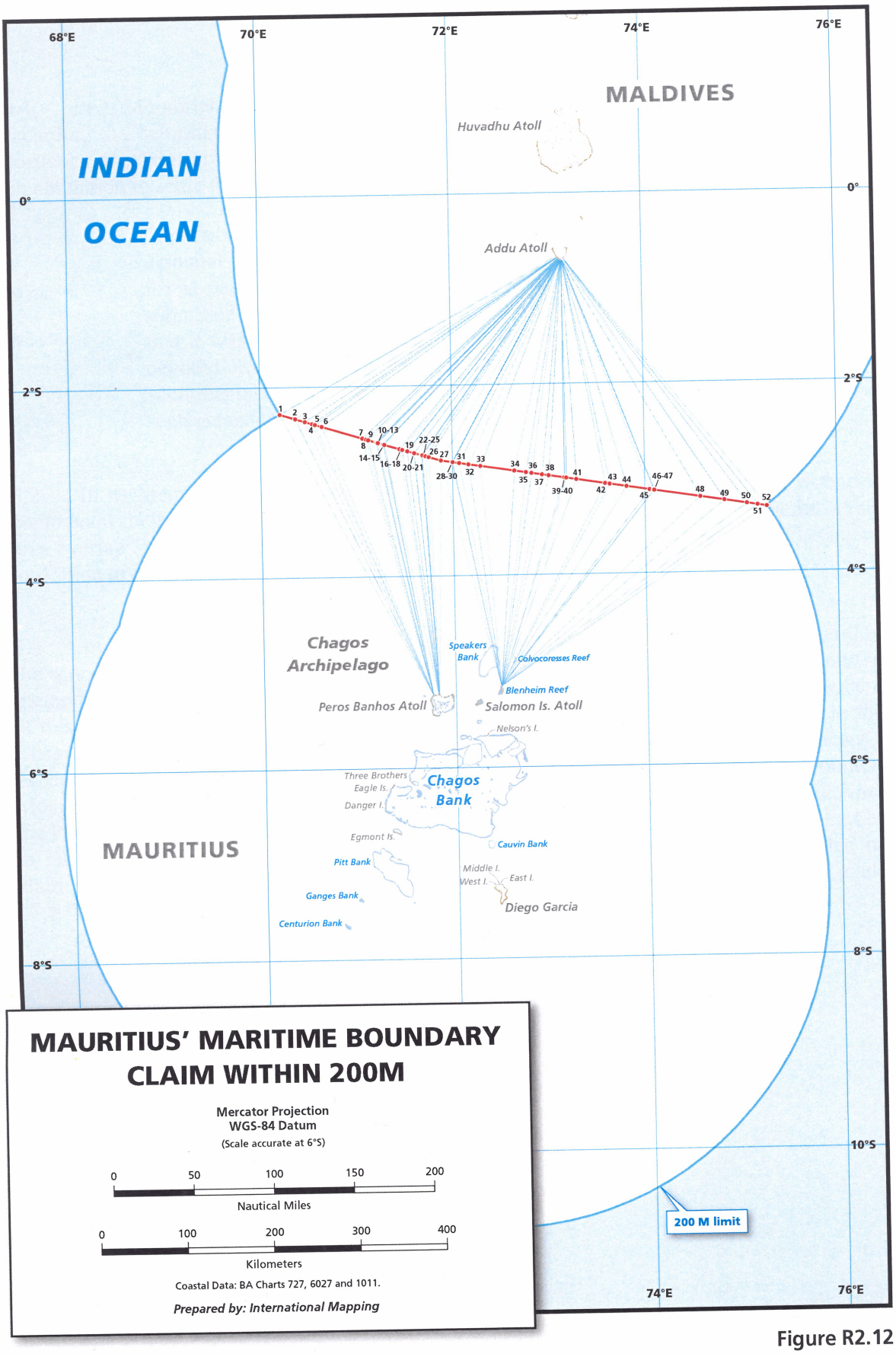

68°E
70°E
72°E
74°E
76°E
MALDIVES
Huvadhu Atoll
INDIAN
OCEAN
0°
Addu Atoll
2°S
Mauritius' Claim Line
1 2 3 4 5 6 7 8 9 10-13 14-15 16-18 19 20-21 22-25 26 27 28-30 31 32 33 34 35 36 37 38 39-40 41 42 43 44 45 46-47 48 49 50 51 52
Maldives' Claim Line
Area in Dispute
(4,690 sq. km. as calculated by Maldives)
(4,694 sq. km. as calculated by Mauritius)
4°S
Chagos
Archipelago
Speakers
Bank
Colvocoresses Reef
Blenheim Reef
Peros Banhos Atoll
Salomon Is. Atoll
Nelson's I.
6°S
Three Brothers
Eagle Is.
Danger I.
Chagos
Bank
Egmont Is.
Cauvin Bank
MAURITIUS
Pitt Bank
Middle I.
West I.
East I.
Ganges Bank
Diego Garcia
Centurion Bank
8°S
10°S
200 M limit
74°E
76°E
AREA IN DISPUTE AS DEFINED BY
THE CLAIMS OF THE PARTIES
Mercator Projection
WGS-84 Datum
(Scale accurate at 6°S)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Coastal Data: BA Charts 727, 6027 and 1011.
Prepared by: International Mapping

Figure R2.11

maritime area of 1.03 to 1 in favour of Mauritius, it follows that – in any event – Mauritius' line results in no disproportionality.

* * *

2.89 For the foregoing reasons, Mauritius submits that the maritime boundary between the Parties in the EEZ and continental shelf within 200 M should be delimited by the equidistance line depicted in Figure 4.6 of the Memorial and reproduced in **Figure R2.12**. Such a line produces the equitable solution the law requires and there are no reasons warranting any adjustment to it.



MAURITIUS' MARITIME BOUNDARY CLAIM WITHIN 200M

Mercator Projection
WGS-84 Datum
(Scale accurate at 6°S)

0 50 100 150 200
Nautical Miles

0 100 200 300 400
Kilometers

Coastal Data: BA Charts 727, 6027 and 1011.

Prepared by: International Mapping

Figure R2.12

CHAPTER 3
JURISDICTION AND ADMISSIBILITY

3.1 In its Memorial, Mauritius addressed the Special Chamber's jurisdiction over this case, including the delimitation of the Parties' continental shelf beyond 200 M.[141] It recalled, in particular, the Arbitral Tribunal's position in *Barbados v. Trinidad and Tobago* that it was under an obligation to settle the entire dispute submitted to it:

> The Tribunal considers that the dispute to be dealt with by the Tribunal includes the outer continental shelf, since (i) it either forms part of, or is sufficiently closely related to, the dispute submitted by Barbados, (ii) the record of the negotiations shows that it was part of the subject-matter on the table during these negotiations and (iii) in any event there is in law only a single "continental shelf" rather than an inner continental shelf and a separate extended or outer continental shelf.[142]

3.2 In its Memorial, Mauritius noted that "[b]oth Parties agree that there is an extended continental shelf beyond 200 M from their respective coasts, and that their entitlements in this area overlap."[143] In the submission of Mauritius, there was no reason for the Special Chamber to decline to exercise jurisdiction over this or any other part of Mauritius' claim.[144]

3.3 In its Counter-Memorial, however, Maldives challenges Mauritius' position regarding the scope of the Special Chamber's jurisdiction. It argues that, since the Parties agree on the methodology to be applied for delimiting their maritime boundary, the only actual disagreement at this stage concerns "the relevance of a remote low-tide elevation [Blenheim Reef] in the Chagos Archipelago."[145] According to Maldives, Mauritius now attempts "to significantly expand that narrow dispute by making an entirely new claim to an OCS."[146] In its Counter-Memorial, Maldives maintains that the Special Chamber does not have jurisdiction to delimit the Parties' continental shelves beyond 200 M because there was no dispute between the Parties in respect of overlapping extended continental shelf claims at the time Mauritius filed its claim.[147] Maldives asserts that this is due to the fact that, at that time, Mauritius had never made

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[141] MM, paras. 4.50 *et seq.*

[142] *Barbados v. Trinidad and Tobago*, para. 213.

[143] MM, para. 4.61.

[144] *Ibid.*

[145] MCM, para. 5.

[146] *Ibid.*, para. 6.

[147] *Ibid.*, para. 57.

a claim to an extended continental shelf in the area concerned by the present delimitation process.[148]

3.4 Maldives additionally contends that:

> 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.[149]

3.5 Finally, Maldives argues that, in any event, this part of Mauritius' claim is inadmissible in view of the fact that Mauritius "has submitted only preliminary information with the CLCS, and has not filed a full submission" and that this preliminary information was submitted "12 years after the expiration of the extended time limit for doing so."[150]

3.6 This Chapter addresses each of the arguments put forward by Maldives. It shows that none has any merit, and that there is no reason for the Special Chamber to limit its intervention to the delimitation of the Parties' maritime boundary within 200 M. **Section I** recalls the history of the dispute between the Parties. **Section II** then shows, based on, *inter alia*, the Judgment of the Special Chamber on Preliminary Objections, that Maldives' approach to the Chamber's jurisdiction – and of the dispute with which it has been seised – is unjustifiably narrow and not supported by precedent. Finally, **Section III** demonstrates that Maldives' arguments on the alleged inadmissibility of this part of Mauritius' claim are groundless.

I. History of the Dispute between the Parties

3.7 In its Written Observations on the Preliminary Objections raised by Maldives and in its Memorial, Mauritius provided a detailed account of the history of the dispute between the Parties.[151] This account does not need to be repeated. It is recalled, however, that both Parties referred to the area where their respective claims overlapped in terms that evolved over time and that they have always envisaged the issue of maritime delimitation between them in a broad and comprehensive way, including areas within and beyond 200 M.

3.8 In 2010, following Maldives' submission to the CLCS of information on the limits of the continental shelf beyond 200 M, the Parties initially agreed to "hold[] [discussions] for the

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[148] *Ibid.*, para. 56.

[149] *Ibid.*, para. 55(b)(iii).

[150] *Ibid.*, para. 55(b)(i).

[151] Written Observations of the Republic of Mauritius on the Preliminary Objections raised by the Republic of Maldives (hereinafter "MWO"), paras. 3.40 *et seq.*; MM, paras. 3.6 *et seq.*

delimitation of the exclusive economic zones [of the two countries]."[152] When the agreed meeting took place, a few weeks later, its purpose evolved, and the Parties agreed "to discuss a potential overlap of the *extended continental shelf* and to exchange views on *maritime delimitation* between the two … States."[153] Such discussion was not limited to any potential overlap within 200 M.

3.9 In its Diplomatic Note of March 2019 to Maldives, Mauritius referred to "the meeting on maritime delimitation held between Mauritius and the Maldives in Malé in October 2010," and to the absence, following the ICJ's Advisory Opinion of 25 February 2019, of "any impediment to delimiting the maritime boundary between Mauritius and Maldives."[154] On that basis, Mauritius invited Maldives' authorities to a second round of discussions on this issue.

3.10 At no point in time have the Parties been less comprehensive as to the scope of their claims or of the dispute itself. At no time have the exchanges referred to any limit of the discussions to areas within 200 M. And, in its Notification and Statement of Claim initiating these proceedings, Mauritius defined the "subject matter of the dispute" as "the delimitation of the Exclusive Economic Zone … and continental shelf of Mauritius with Maldives in the Indian Ocean."[155] From the outset, the subject matter of the dispute was thus defined in the most comprehensive terms.

3.11 It is therefore entirely artificial for Maldives, at this stage of the dispute, to seek to limit the jurisdiction *ratione materiae* of the Special Chamber on the grounds that there had been no prior dispute between the Parties on a possible overlap of their respective extended continental shelves, that is to say in the area beyond 200 M. The history of the relations between the Parties clearly evidences that they have always approached the issue of maritime delimitation *as a whole*, without limitation as to geographic extent, and without distinguishing between the various areas that may be concerned – in particular, without ever distinguishing between the continental shelf within and beyond 200 M. And, at least once, in 2010, the Parties referred to "a potential overlap of the *extended continental shelf*," which confirms that the continental shelf beyond 200 M was also intended to be a part of the delimitation process.[156]

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[152] Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of Maldives (21 September 2010) (MWO, Annex 12).

[153] First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (MWO, Annex 13).

[154] Diplomatic Note No 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations, 7 March 2019 (Maldives' Preliminary Objections (hereinafter "MPO"), Annex 16).

[155] Notification and Statement of the Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019, para. 3 (MPO, Annex 1).

[156] 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) (MWO, Annex 26).

II. The Special Chamber's Approach to the Dispute in its Judgment of 28 January 2021

3.12 Maldives' narrow and artificial approach to the Special Chamber's jurisdiction finds no support in the Judgment of 28 January 2021 on Preliminary Objections.

3.13 In its Counter-Memorial, Maldives asserts that:

> 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.[157]

According to Maldives:

> 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.[158]

3.14 To support this assertion, Maldives refers to paragraph 332 of the Judgment of 28 January 2021,[159] in which the Special Chamber expresses its view that:

> 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 this area.[160]

3.15 But the inferences that Maldives attempts to draw from this section of the Judgment are misconceived. First, paragraph 332 is not as detailed or dispositive as Maldives claims when it comes to the identification of the maritime areas at stake. While Maldives asserts that the Chamber referred to Maldives' claim "to an EEZ, continental shelf within 200 M and OCS," the Chamber in fact only mentions "the claim of the Maldives to a continental shelf beyond 200 nautical miles." Similarly, while Maldives asserts that the Special Chamber referred to an overlap with Mauritius' "EEZ, and continental shelf within 200 M," the Chamber actually only refers to "the claim of Mauritius to an exclusive economic zone in this area."

3.16 This may easily be explained by the fact that in this part of the Judgment the Special Chamber was concerned only with the establishment of the *existence* of a dispute between the Parties. In order to establish the existence of such a dispute, the Chamber relied on statements made by the Parties when the dispute crystallised, *i.e.*, in the period between 2010 and 2011. It

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[157] MCM, para. 57.

[158] *Ibid.*

[159] *Ibid.*, para. 52 and footnote 111.

[160] Preliminary Objections Judgment, para. 332.

is apparent that paragraph 332 of the Judgment seeks only to reflect the language of these statements, as they were made at the time. Such statements do not, however, shed any light on the exact *scope* of the dispute that is presently before the Special Chamber.

3.17 Second, and most significantly, the way in which the Special Chamber ultimately characterises the dispute in the present case makes it clear that Maldives has taken paragraph 332 out of its context, and seeks to give it a meaning that it does not possess. The Special Chamber concludes its examination of Maldives' fourth preliminary objection, relating to the alleged absence of a dispute between the Parties, by holding in the most general terms in paragraph 335 that:

> in the present case a dispute existed between the Parties *concerning the delimitation of their maritime boundary* at the time of the filing of the Notification.[161]

3.18 In even more clear and compelling terms, the Special Chamber found in the operative part of the Judgment that:

> it has jurisdiction to adjudicate upon the dispute *submitted to it by the Parties concerning the delimitation of the maritime boundary between them* in the Indian Ocean.[162]

The reference to the dispute "submitted to it by the Parties" is crystal clear: the Special Chamber does not call into question the fact that the dispute submitted by the Parties' Special Agreement (and reflecting the Application initially made by Mauritius) covers the delimitation as a whole, including that part which relates to "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," as is explicitly mentioned in Mauritius's Notification of Claim.[163] It is plain that the dispute submitted to the Special Chamber by the Parties includes an area beyond 200 M.

3.19 There is therefore nothing in the Judgment of 28 January 2021 that supports Maldives' attempts to distinguish between a pre-existing dispute and a "new" dispute between the Parties, the latter covering only delimitation between the Parties' extended continental shelves and being *ex hypothesi* outside of the scope of the Special Chamber's jurisdiction. To the contrary, as noted above, the Special Chamber confirmed its jurisdiction in terms of the dispute as submitted by the Parties. The dispute submitted by the Parties plainly encompasses a dispute in relation to the outer continental shelf.

3.20 In its Judgment on Preliminary Objections, the Special Chamber deferred

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[161] *Ibid.*, para. 335 (emphasis added).

[162] *Ibid.*, para. 354(6) (emphasis added).

[163] Notification and Statement of the Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019, para. 27 (MPO, Annex 1).

> to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.[164]

This language offers further confirmation that the Special Chamber concluded that it had jurisdiction over all aspects of the dispute as submitted, including in respect of areas beyond 200 M, but that it would defer the question of whether to *exercise* aspects of that jurisdiction to the merits phase. There is a cardinal distinction between the *existence* of jurisdiction, and the *exercise* of jurisdiction. The Special Chamber's conclusion makes clear that the delimitation of the continental shelf beyond 200 M is not a question that necessarily lies outside of the scope of its jurisdiction, as Maldives argues.[165] Rather, it is simply an indication that the Special Chamber will, in conformity with well-established case-law, and entirely correctly, examine at the merits stage whether the Parties' claims to continental shelf rights beyond 200 M are in accordance with Article 76 of UNCLOS.

III. Mauritius' Claim to a Continental Shelf Entitlement Beyond 200 M in the Northern Chagos Archipelago Region is Admissible

3.21 Maldives' argument that Mauritius' claim in respect of its extended continental shelf entitlement is inadmissible is also without merit.

3.22 Maldives argues that this claim is inadmissible because:

- Mauritius had not filed a full submission to the CLCS concerning its outer continental shelf claim in the Northern Chagos Archipelago Region;[166]
- Mauritius has allegedly "failed to comply with the mandatory time limits for OCS claims";[167]
- Mauritius' "alleged entitlement to an OCS in the 'Northern Chagos Archipelago Region' is manifestly unfounded";[168] and
- Mauritius' proposed delimitation is "predicated on the CLCS process resulting in a specific delineation."[169]

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[164] Preliminary Objections Judgment, para. 354(6).

[165] MCM, para. 57.

[166] *Ibid.*, para. 75.

[167] *Ibid.*, para. 76.

[168] *Ibid.*, paras. 79-86.

[169] *Ibid.*, paras. 90-92.

3.23 It should be observed that most of these arguments are aimed at challenging Mauritius' claim to a continental shelf beyond 200 M on the merits, rather than in terms of jurisdiction or admissibility properly speaking. These are therefore addressed in detail in Chapter 4. The only argument relating to admissibility as such is Mauritius' alleged failure "to comply with the mandatory time limits for OCS claims."[170] The argument is without merit.

3.24 In its Memorial, Mauritius summarised the steps it has taken to comply with its obligations under Article 76 of UNCLOS:

> In May 2009, Mauritius submitted to the CLCS preliminary information concerning the extended continental shelf in the Chagos Archipelago region, in order to satisfy the requirement of Article 4 of Annex II to the Convention. At the time, Mauritius stated its intention to complete a Submission in respect of that region by 2012. The Submission was however delayed. It was completed in 2019 for the Southern part of that region and Amended Preliminary Information was submitted in May 2021 for its Northern part.[171]

3.25 According to Maldives, the reasons why the steps taken by Mauritius may not be said to be in conformity with the requirements under UNCLOS in this respect are the following:

> (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; (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.[172]

3.26 Maldives' argument appears to be based on the notion that Mauritius' communication of May 2021 is an entirely new submission, devoid of any relation with the Preliminary Information submitted by Mauritius on the Chagos Archipelago Region in 2009. This is not the case.

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[170] *Ibid.*, para. 76.

[171] MM, para. 3.12 (references omitted).

[172] MCM, para. 77.

3.27 It is true that the Preliminary Information submitted by Mauritius in 2009 focuses on "the outer edge of the continental margin in the relevant land territory in the Chagos Archipelago Region (Egmont and Diego Garcia Islands)"[173] and that the map included therein illustrates the indicative extended continental shelf in the southern part of that region only.[174] But in the 2009 Preliminary Information, Mauritius clearly expressed at the time its intention "to make a submission for an extended continental shelf in respect of the Chagos Archipelago Region,"[175] recalling paragraph 1(c) of the decision of the States parties to UNCLOS contained in document SPLOS/183, according to which "the Preliminary Information is without prejudice to the submission."[176]

3.28 The Amended Preliminary Information submitted by Mauritius in May 2021 is therefore properly identified and to be treated as the completion of the preliminary information submitted in 2009 on the Chagos Archipelago Region.[177] As such, it plainly falls within the time limit set out in the decision contained in document SPLOS/183 and it is fully admissible for the purposes of the present proceedings. Indeed, Mauritius' Amended Preliminary Information appears on the CLCS website alongside the earlier submission, which makes clear that the 2021 submission is to be treated as a clarification of the earlier 2009 submission.[178]

3.29 Maldives' arguments relating to the absence of a full submission concerning the Northern Chagos area are equally groundless. Mauritius has now made such a submission.[179] For the same reasons, its admissibility for the purposes of the present proceedings is clearly established.

3.30 Mauritius therefore respectfully submits that the Special Chamber has jurisdiction to proceed with the delimitation of the maritime boundary between the Parties, both within and beyond 200 M, and that its claim to a continental shelf beyond 200 M in the present proceedings is fully admissible.

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[173] United Nations Convention on the Law of the Sea, *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*, MCS-PI-DOC (May 2009) para. 3-4, *available at* https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/mus_2009_preliminaryinfo.pdf (last accessed 12 April 2022).

[174] *Ibid.*, p. 10.

[175] *Ibid.*, para. 2-2.

[176] *Ibid.*, para. 2-3.

[177] United Nations Convention on the Law of the Sea, *Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region*, MCN-PI-DOC (May 2021) (MM, Vol. III, Annex 3).

[178] United Nations Division for Ocean Affairs and the Law of the Sea, *Preliminary Information indicative of the outer limits of the continental shelf beyond 200 nautical miles* (10 March 2022), *available at* https://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, under "Mauritius" (last accessed 12 April 2022).

[179] Mauritius' Partial Submission to the CLCS (MR, Vol. III, Annex 3).

CHAPTER 4
DELIMITATION OF THE CONTINENTAL SHELF BEYOND 200 M

4.1 In this Chapter, Mauritius responds to the arguments set out in the Counter-Memorial regarding the delimitation of the continental shelf beyond 200 M. For the reasons explained below, the equitable solution required by Article 83 of UNCLOS leads to the result that the area of overlapping entitlements beyond 200 M must be delimited by means of a line that apportions that area equally. Maldives' Counter-Memorial offers no basis for an alternative conclusion.

4.2 In **Section I**, Mauritius shows that there is no merit to Maldives' argument that Mauritius lacks an entitlement to a continental shelf beyond 200 M. In **Section II**, Mauritius demonstrates that delimiting the continental shelf beyond 200 M by means of an equidistance line would not be equitable because it would unjustifiably allocate to Maldives approximately 99 percent of the area of overlapping entitlements. Instead, in the circumstances presented here, an equal apportionment is the equitable solution that the Convention requires.

I. Mauritius Has an Entitlement to a Continental Shelf Beyond 200 M

4.3 In the Memorial, Mauritius showed that both Parties claim entitlements to the same general area of continental shelf located beyond 200 M from their respective coasts.[180] The extent of Mauritius' entitlement was described in the Amended Preliminary Information that Mauritius submitted to the CLCS on 24 May 2021, a clarification of the original 6 May 2009 Preliminary Information and not a new one.[181] This area of entitlement was subsequently described in further detail in Mauritius' Partial Submission in regard to the Northern Chagos Archipelago Region on 12 April 2022.[182] In that Partial Submission, Mauritius presented a more refined and accurate description of its continental shelf entitlement beyond 200 M than had been presented in the Preliminary Information, resulting in a slight adjustment to the location of the entitlement.[183]

4.4 For its part, Maldives described its claimed entitlement beyond 200 M in its submission to the CLCS dated 26 July 2010.[184]

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[180] MM, para. 4.48.

[181] United Nations Convention on the Law of the Sea, *Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region*, MCN-PI-DOC (May 2021) (MM, Vol. III, Annex 3).

[182] Mauritius' Partial Submission to the CLCS (MR, Vol. III, Annex 3).

[183] The coordinates for the outer limit of Mauritius' outer continental shelf entitlement are set out in para. 5.2.4 of the Partial Submission of April 2022. These coordinates supersede those included in Mauritius' Preliminary Information.

[184] *See* United Nations Convention on the Law of the Sea, *Submission by the Republic of Maldives to the Commission on the Limits of the Continental Shelf, Executive Summary*, MAL-ES-DOC (July 2010) (hereinafter "Maldives' CLCS Submission") (MM, Vol. III, Annex 5).

4.5 As shown in **Figure R4.1**, the Parties' overlapping entitlements encompass an area of approximately 22,272 km^2. Due to the Partial Submission's refinement of the area of Mauritius' continental shelf entitlement beyond 200 M, the area of overlapping entitlements is 26 km^2 smaller than the area described in the Memorial, which was based on Mauritius' Preliminary Information. Mauritius proceeds on the basis of the more accurate Partial Submission.

4.6 In its Counter-Memorial, Maldives contends that Mauritius has no entitlement to a continental shelf beyond 200 M. It does so on the basis of a mistaken argument, namely that the foot of slope point that Mauritius uses to establish the outer edge of the continental margin in accordance with Article 76(4)(ii) of the Convention – FOS-VIT31B – is not located on the natural prolongation of Mauritius' land territory.[185]

4.7 There is no merit to this argument. The natural prolongation of Mauritius' continental shelf is based on an extension of the submerged prolongation of the landmass of the Mauritian islands of Peros Banhos and Salomon Islands, and of Blenheim Reef. In particular, those features, as well as the entirety of the Chagos Archipelago, are correctly to be treated as the surface expressions of the emerged parts of the Chagos Ridge, which is itself an integral part of the much larger Chagos-Laccadive Ridge.[186]

4.8 The Chagos-Laccadive Ridge was formed approximately 48-60 million years ago as the product of the Réunion Hotspot, during the northward motion of the Indian plate.[187] As shown in **Figure R4.2**, in addition to the Chagos Bank of the Chagos Archipelago (in the south), the Chagos-Laccadive Ridge includes two additional major platforms: the Laccadive Plateau (in the north); and the Maldive Ridge (in the middle), which includes the islands that comprise Maldives.[188] All three platforms emerged from the Chagos-Laccadive Ridge and share a common geological origin.[189] As also shown in **Figure R4.2**, the Chagos Bank, Laccadive Plateau and Maldive Ridge are all connected, forming a single topographical and geomorphological continuity.[190]

4.9 Mauritius demonstrated this topographical and geomorphological continuity in its Partial Submission to the CLCS of 12 April 2022. As observed therein, the Convention provides that the extent of the continental margin is to be measured from the foot of the continental slope (by one of the methods set out in paragraph 4(a) of Article 76).[191] By implication, the outline of the foot of the continental slope determines the submerged prolongation of the landmass of a coastal State.[192] The foot of the continental slope is, therefore,

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[185] MCM, para. 79.

[186] Mauritius' Partial Submission to the CLCS, para. 2.3.3.2.1 (MR, Vol. III, Annex 3).

[187] *Ibid.*, para. 2.3.1.

[188] *Ibid.*, para. 2.2.1.2.

[189] *Ibid.*

[190] *Ibid.*

[191] *Ibid.*, para. 2.3.3.1.2.

[192] *Ibid.*

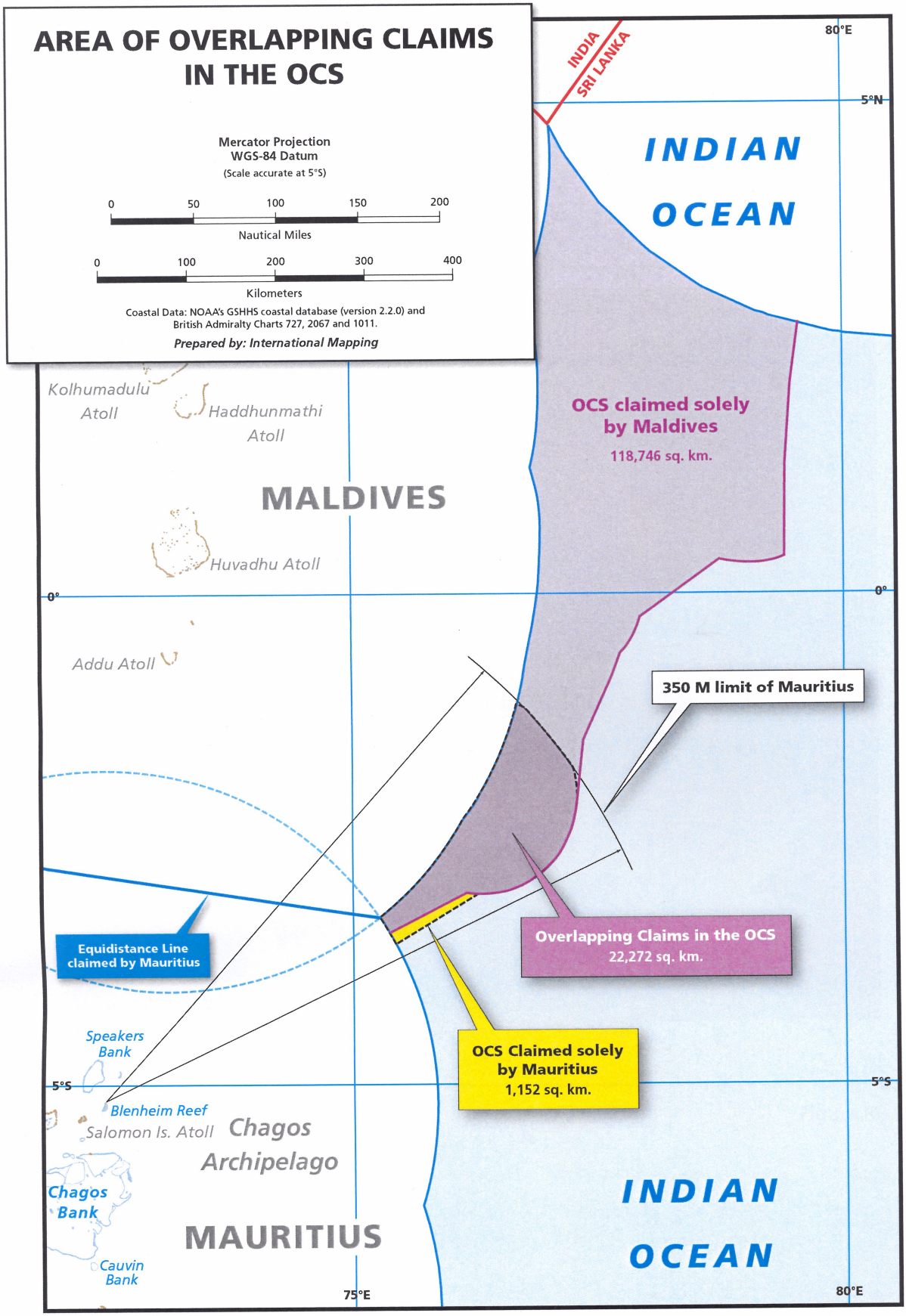
AREA OF OVERLAPPING CLAIMS IN THE OCS
Mercator Projection
WGS-84 Datum
(Scale accurate at 5°S)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Coastal Data: NOAA's GSHHS coastal database (version 2.2.0) and British Admiralty Charts 727, 2067 and 1011.
Prepared by: International Mapping
INDIA
SRI LANKA
80°E
5°N
INDIAN OCEAN
Kolhumadulu Atoll
Haddhunmathi Atoll
MALDIVES
OCS claimed solely by Maldives
118,746 sq. km.
Huvadhu Atoll
0°
Addu Atoll
350 M limit of Mauritius
Equidistance Line claimed by Mauritius
Overlapping Claims in the OCS
22,272 sq. km.
Speakers Bank
OCS Claimed solely by Mauritius
1,152 sq. km.
5°S
Blenheim Reef
Salomon Is. Atoll
Chagos Archipelago
Chagos Bank
MAURITIUS
Cauvin Bank
INDIAN OCEAN
75°E
80°E

Figure R4.1

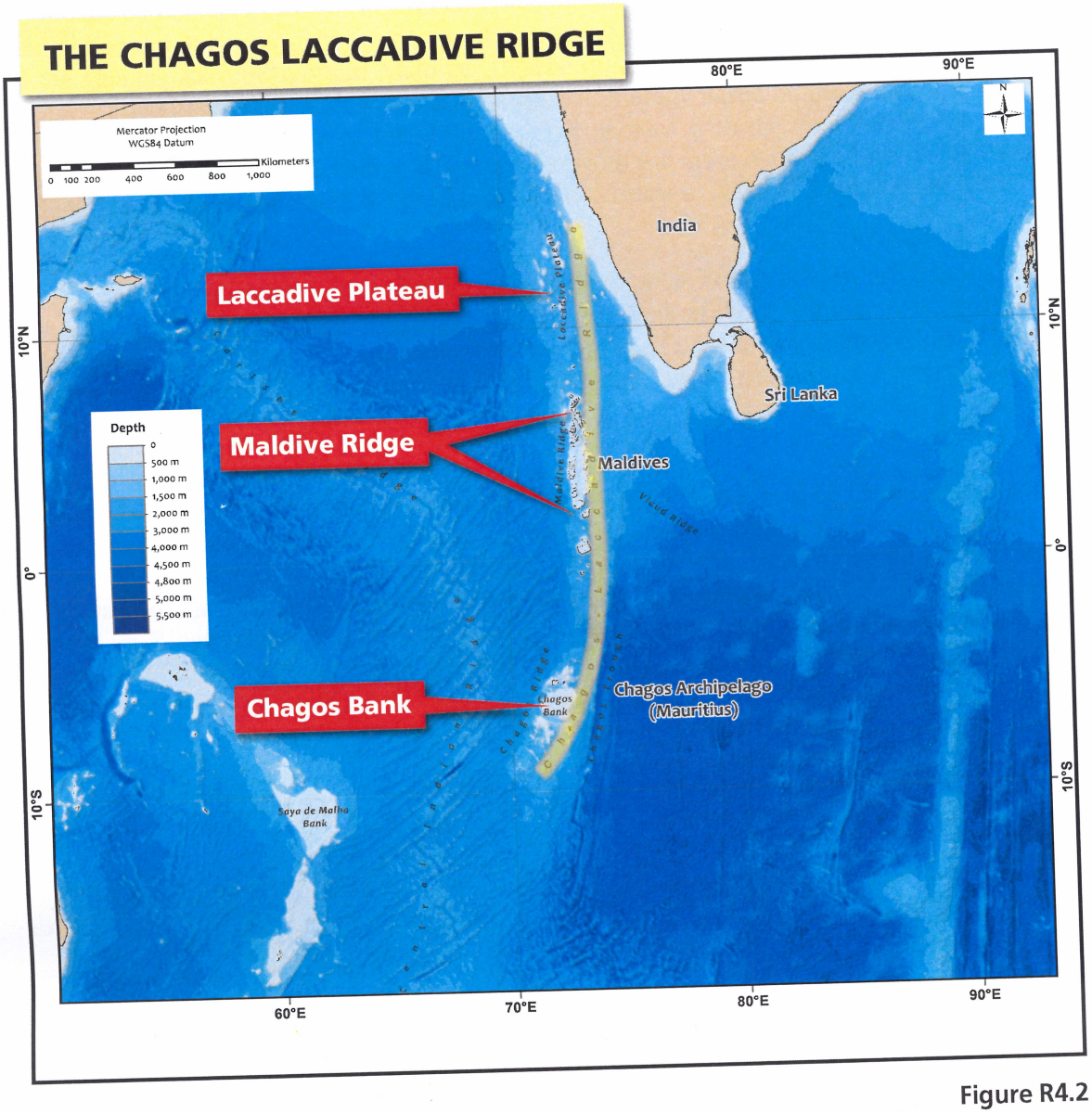
THE CHAGOS LACCADIVE RIDGE
Mercator Projection
WGS84 Datum
Kilometers
0 100 200 400 600 800 1,000
Depth
0
500 m
1,000 m
1,500 m
2,000 m
3,000 m
4,000 m
4,500 m
4,800 m
5,000 m
5,500 m
Laccadive Plateau
Maldive Ridge
Chagos Bank
India
Sri Lanka
Maldives
Chagos Archipelago
(Mauritius)
Saya de Malha
Bank
80°E
90°E
10°N
0°
10°S
60°E
70°E

Figure R4.2

both a measure of the continuity of the continental margin, and the basis for determining the extent (outer edge) of that margin within the meaning of the Convention.[193] It follows that points for the foot of the continental slope should not be determined in isolation; rather, they are to be established within a base of slope region. Mauritius has carried out this task, in accordance with the CLCS Scientific Guidelines, along a contour of similar change of gradient.[194]

4.10 In particular, as shown in **Figure R4.3**, the base of slope region demonstrated in the Partial Submission encompasses a continuous structure along both the landmasses of Mauritius in the Chagos Archipelago and Maldives.[195] The region is demarcated both in terms of its geometry within the regional context and its geomorphology based on the gradient variations of the seafloor.[196] The base of the slope region coincides with the zone where the eastern extension of the Chagos-Laccadive Ridge merges with the more even seafloor of the Central Indian Ocean Basin and where the gradient values conform to those of a continental slope.[197]

4.11 The foot of slope points, including the critical point FOS-VIT31B, are established in this base of slope region along the continuous eastern flank of those features.[198] FOS-VIT31B is at a depth of 4,925 metres at the base of the eastern shelf edge of the Chagos Ridge.[199] Peros Banhos and Salomon Island, as well as Blenheim Reef, are all the surface expression of the Chagos Ridge.[200]

4.12 Maldives is thus wrong to argue that "FOS-VIT31B can only be characterised as the natural prolongation of the Maldives' submerged land territory across the Maldives' seabed."[201] As demonstrated in the Partial Submission, the base of slope region starts southward of the Chagos-Laccadive Ridge, abutting the eastern extension of the Chagos-Laccadive Ridge within the EEZ of Mauritius. The region continues northward along the Chagos-Laccadive Ridge extension without encroaching on the EEZ of Maldives. The foot of

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[193] *Ibid.*

[194] *Ibid.*, paras. 3.2.1-3.2.7.

[195] *Ibid.*

[196] *Ibid.*, paras. 3.2.6.

[197] *Ibid.*, paras. 3.2.7.

[198] *Ibid.*, paras. 3.3.1-3.5.1.3.

[199] *Ibid.*, Table 3.1.

[200] *Ibid.*, para. 2.3.3.2.1. This physical continuity is further demonstrated by seismic refraction data. *Ibid.*, para. 2.3.2.6. The flat topography of the top of the acoustic basement along the north-south axis of the Maldive Ridge and the deep sea channel confirm that the Maldive-Chagos Ridge is a continuous structure. *See ibid.*, paras. 2.3.2.6-2.3.2.10 (discussing Kunnummal, P. and Anand, S.P., "Qualitative appraisal of high resolution satellite derived free air gravity anomalies over the Maldive Ridge and adjoining ocean basins, western Indian Ocean, *Journal of Asian earth* Sciences, 2019).

[201] MCM, para. 82 (emphasis omitted).

slope points, including the critical FOS-VIT31B, are established in this base of slope region, outside Maldives' EEZ, along the continuous eastern flank of the Chagos and Maldive Ridges.

4.13 Nor is Maldives correct that the Chagos Trough "passes through the entire EEZ of Mauritius"[202] such that, Maldives contends, the Trough "creates a clear break in the submerged prolongation of the Chagos Archipelago landmass."[203] In fact, as shown in **Figure R4.4**, although part of the Chagos Trough is located in Mauritius' EEZ, its path is interrupted by the Gardiner Seamounts, a feature that enables Mauritius to establish the natural prolongation of its landmass.[204]

4.14 The upshot of the continuity described above is that there is a single physical shelf in the area, a portion of which is claimed by both Parties. The location of FOS-VIT31B is therefore as much a natural prolongation of the landmass of Mauritius as it is of the landmass of Maldives. Accordingly, Mauritius' entitlement to a continental shelf beyond 200 M satisfies the requirement, set out in Article 76(1) of the Convention, namely that the "continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin." And, for the same reason, Mauritius' entitlement further satisfies the requirement of Article 76(3) that the "continental margin comprises the submerged prolongation of the land mass of the coastal State." The entitlement of Mauritius to a continental shelf beyond 200 M is clearly established.

4.15 The argument of Maldives that the Special Chamber should decline to delimit the boundary in the absence of recommendations by the CLCS is also without merit.[205] As ITLOS observed in *Bangladesh/Myanmar*:

> the exercise by international courts and tribunals of their 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.[206]

Similarly, in *Nicaragua v. Colombia*, the ICJ held that:

> since the delimitation of the continental shelf beyond 200 nautical miles can be undertaken independently of a recommendation from the CLCS, the latter is not a prerequisite that needs to be satisfied by a State party to UNCLOS before it

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[202] *Ibid.*, para. 83.

[203] *Ibid.*, para. 84.

[204] General Bathymetic Chart of the Oceans Sub-Committee on Undersea Feature Names, International Hydrographic Organization-Intergovernmental Oceanographic Commission, *Gazetteer of Undersea Feature Names available at* https://gebco.net/data_and_products/undersea_feature_names/ (last accessed 13 April 2022).

[205] MCM, paras. 66-75.

[206] *Bangladesh/Myanmar*, Judgment, ITLOS Reports 2012, p. 100, para. 379.

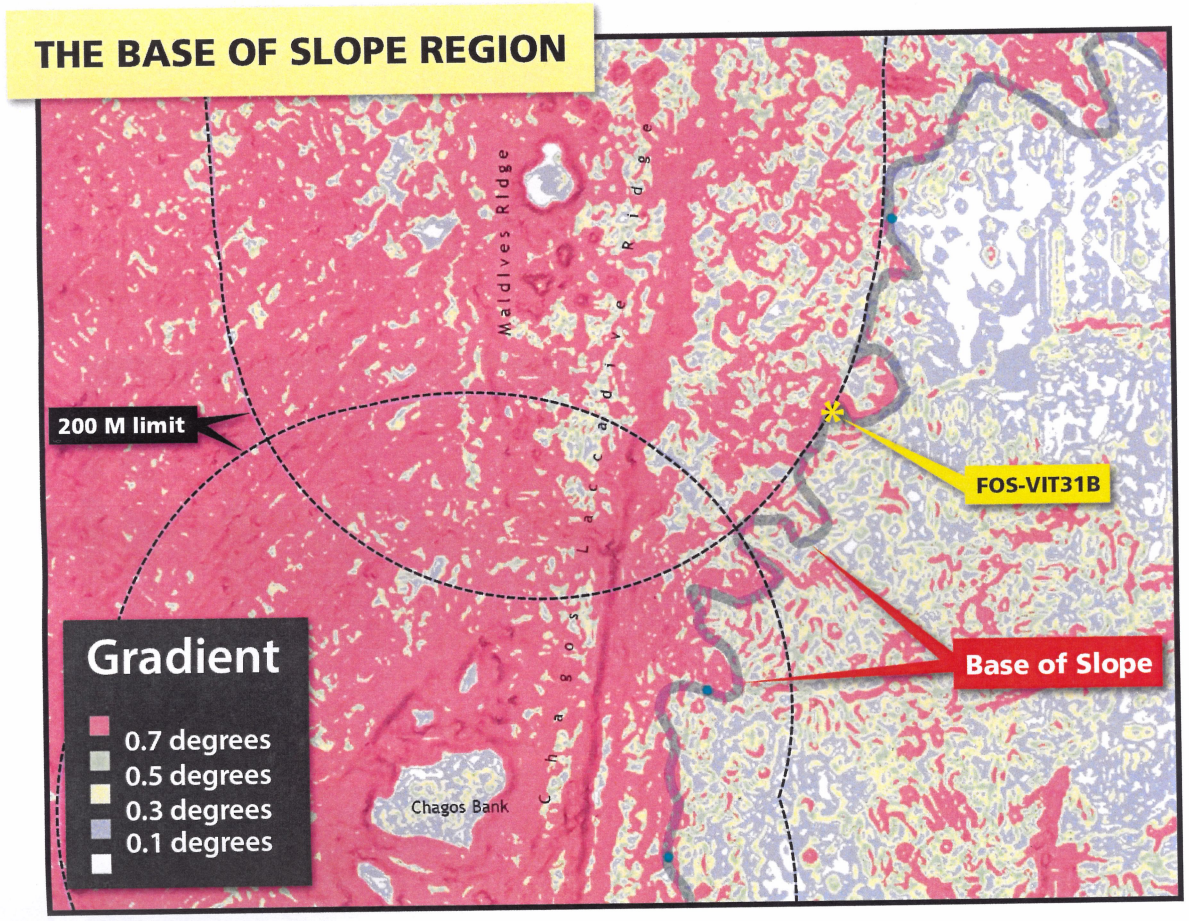
THE BASE OF SLOPE REGION
Maldives Ridge
Chagos Laccadive Ridge
200 M limit
FOS-VIT31B
Base of Slope
Gradient
0.7 degrees
0.5 degrees
0.3 degrees
0.1 degrees
Chagos Bank

Figure R4.3

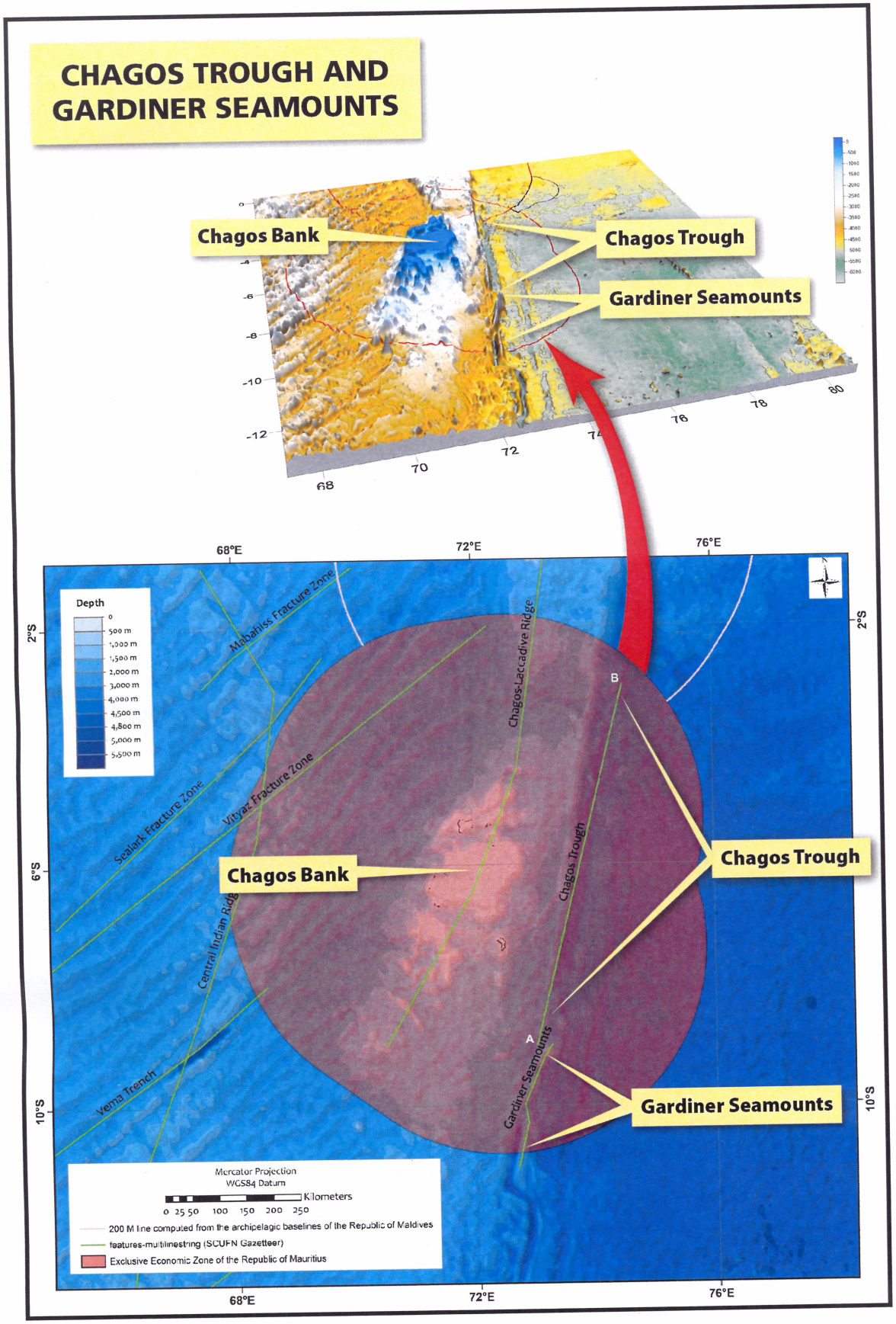
CHAGOS TROUGH AND GARDINER SEAMOUNTS
Chagos Bank
Chagos Trough
Gardiner Seamounts
68°E
72°E
76°E
2°S
6°S
10°S
Depth
0
500 m
1,000 m
1,500 m
2,000 m
3,000 m
4,000 m
4,500 m
4,800 m
5,000 m
5,500 m
Mabahiss Fracture Zone
Chagos-Laccadive Ridge
Vityaz Fracture Zone
Scalark Fracture Zone
Central Indian Ridge
Chagos Trough
Vema Trench
Gardiner Seamounts
A
B
Chagos Bank
Chagos Trough
Gardiner Seamounts
Mercator Projection
WGS84 Datum
Kilometers
0 25 50 100 150 200 250
200 M line computed from the archipelagic baselines of the Republic of Maldives
features-multilinestring (SCUFN Gazetteer)
Exclusive Economic Zone of the Republic of Mauritius

Figure R4.4

> can ask the Court to settle a dispute with another State over such a delimitation.[207]

More recently, in its Judgment of 12 October 2021 in *Somalia v. Kenya*, the ICJ confirmed that:

> the lack of delineation of the outer limit of the continental shelf is not, in and of itself, an impediment to its delimitation between two States with adjacent coasts.[208]

4.16 Thus, as is made clear in *Bangladesh v. India* and the two ICJ cases, there are "no grounds" for the Special Chamber to "refrain from exercising its jurisdiction to decide" on the "delimitation of the continental shelf beyond 200 nm before its outer limits have been established."[209] Indeed, as ITLOS held in *Bangladesh/Myanmar*, delimiting the boundary is an exercise to be carried out under its jurisdiction that is necessary for the Special Chamber to "fulfil its responsibilities under Part XV, Section 2, of the Convention," which imposes "an obligation to adjudicate the dispute and to delimit the continental shelf between the Parties beyond 200 nm."[210]

II. The Equitable Solution Required by Article 83

4.17 In its Memorial, Mauritius showed that, in the circumstances that pertain in this case, the equitable solution required by Article 83 of UNCLOS is satisfied by an equal apportionment of the area of overlapping entitlements effectuated by means of an azimuth of 55 degrees extending from the eastern end of the 200 M limit.[211] Nothing in the Counter-Memorial justifies delimiting the continental shelf beyond 200 M in a different manner.

4.18 Maldives is wrong to argue that the Special Chamber should – in a robotic manner – apply the three-stage delimitation methodology merely because it is appropriate for the Parties' delimitation within 200 M. Article 83(1) of UNCLOS mandates that delimitation of the continental shelf must "achieve an equitable solution." While in many, if not most, delimitation scenarios an equitable solution can be achieved through the construction of a provisional equidistance line, subsequently modified to take account of any relevant circumstances and/or gross disproportionality, the case law is clear that application of the three-step delimitation methodology is not a *fait accompli*. As ITLOS has explained, Article 83(1) "stipulate[s] that

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[207] *Nicaragua v. Colombia*, Judgment, Preliminary Objections, 17 March 2016, para. 114.

[208] *Somalia v. Kenya*, Judgment, para. 189, citing with approval *Bangladesh/Myanmar*, 2012, para. 379.

[209] *Bangladesh v. India*, para. 76.

[210] *Bangladesh/Myanmar*, para. 394.

[211] MM, paras. 4.67-4.80. In light of the modest 26 km^2 reduction in the size of the area of overlapping entitlements beyond 200 M, *see supra* para. 4.5, there is a corresponding *de minimis* modification of the bearing of the line that divides the area equally, which has changed from 54.9995 to 55.025 degrees.

the delimitation of the ... continental shelf... must be effected on the basis of international law in order to achieve an equitable solution, *without specifying the method to be applied.*"[212]

4.19 The jurisprudence confirms that the appropriate delimitation methodology to be utilized is to be decided on a case-by-case basis, having regard for the specific geographical context.[213] As the Tribunal has made clear: "the issue of which method should be followed in drawing the maritime delimitation should be considered in light of the circumstances of each case."[214] In all instances, the "goal of achieving an equitable result must be the paramount consideration."[215] Accordingly, "the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result."[216]

4.20 In the circumstances of the present case, applying the equidistance/relevant circumstances methodology would very obviously not yield an equitable solution. Maldives does not dispute that, as shown in **Figure R4.5**, the application of that methodology would result in Maldives being apportioned 22,022 km^2 of the area of overlapping entitlements, which amounts to 98.88% of the area. Mauritius would be left with a mere 250 km^2, that is, just 1.12% of the area. The Counter-Memorial of Maldives does not seek to defend the equitableness of such a result, and it cannot do so.

4.21 Instead, Maldives simply invokes prior cases where international courts or tribunals have extended adjusted or unadjusted equidistance lines *within* 200 M to delimit the continental shelf *beyond* 200 M. But, in each of those cases, the court or tribunal carefully noted that extending the equidistance line was justified on the facts, and neither a foregone conclusion nor the application of a mechanical methodology. For instance, in *Bangladesh/Myanmar*, ITLOS explained that "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."[217] Nor, in *Bangladesh v. India*, did the Arbitral Tribunal unthinkingly merely extend the delimitation line that it had determined to exist up to 200 M. Rather, in connection with the delimitation beyond 200 M, the Arbitral Tribunal explained that it "must examine the geographic situation as a whole."[218] And, in *Somalia v. Kenya*, the Court extended the delimitation line that it had drawn within 200 M only after reciting specific considerations and then specifying that "*[i]n view of the foregoing*, the Court considers it appropriate to extend the geodetic line used for

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[212] *Bangladesh/Myanmar*, para. 225 (emphasis added).

[213] *Ghana/Cote d'Ivoire*, para. 281 ("The appropriate delimitation methodology – if the States concerned cannot agree – is left to be determined through the dispute-settlement mechanism and should achieve an equitable solution in light of the circumstances of each case.").

[214] *Bangladesh/Myanmar*, para. 235.

[215] *Ibid.*

[216] *Ibid.*

[217] *Bangladesh/Myanmar*, para. 455 (emphasis added).

[218] *Bangladesh v. India*, para. 410.

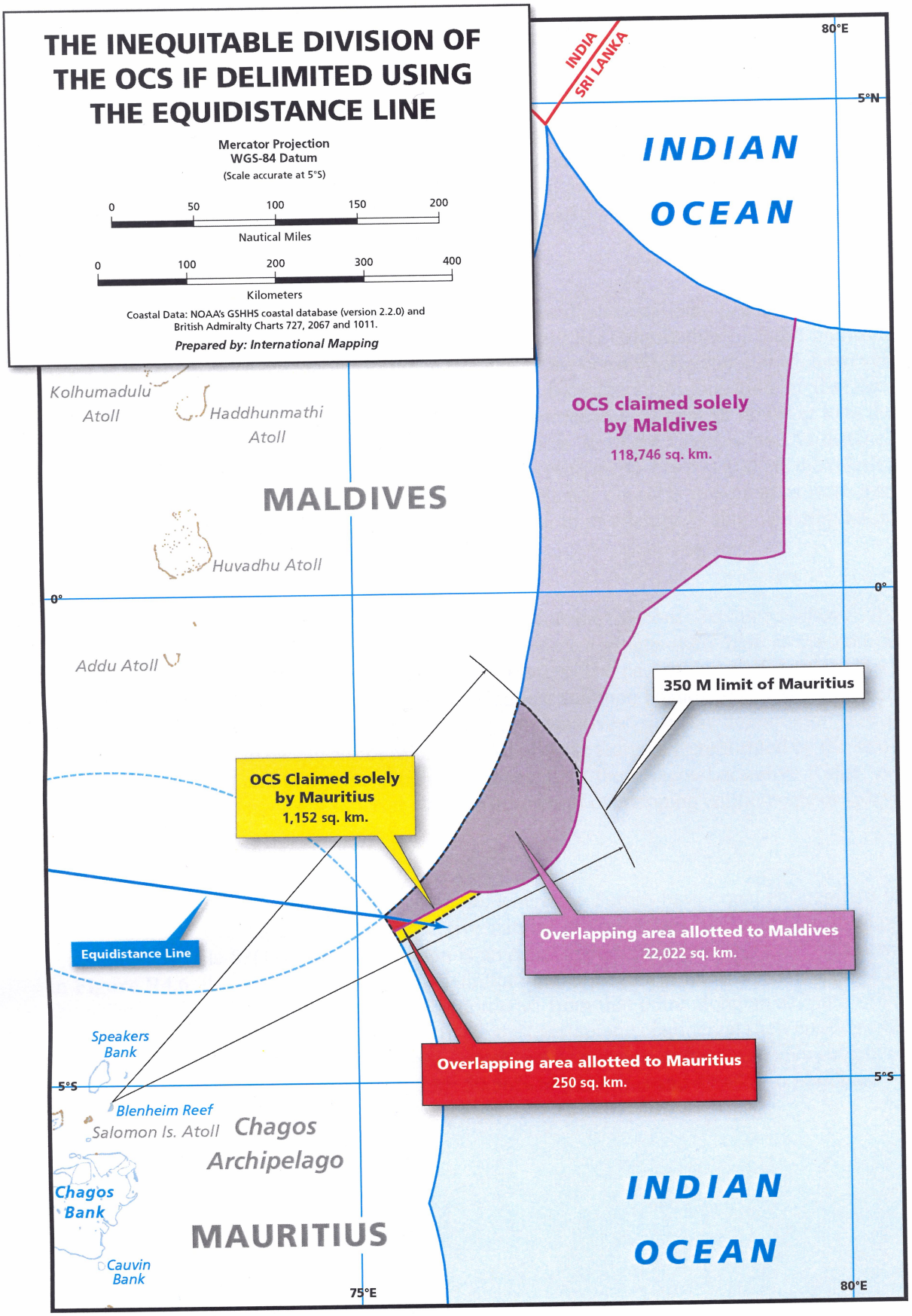
THE INEQUITABLE DIVISION OF THE OCS IF DELIMITED USING THE EQUIDISTANCE LINE
Mercator Projection
WGS-84 Datum
(Scale accurate at 5°S)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Coastal Data: NOAA's GSHHS coastal database (version 2.2.0) and British Admiralty Charts 727, 2067 and 1011.
Prepared by: International Mapping
INDIA
SRI LANKA
80°E
5°N
INDIAN OCEAN
OCS claimed solely by Maldives
118,746 sq. km.
Kolhumadulu Atoll
Haddhunmathi Atoll
MALDIVES
Huvadhu Atoll
0°
Addu Atoll
350 M limit of Mauritius
OCS Claimed solely by Mauritius
1,152 sq. km.
Equidistance Line
Overlapping area allotted to Maldives
22,022 sq. km.
Speakers Bank
5°S
Overlapping area allotted to Mauritius
250 sq. km.
Blenheim Reef
Salomon Is. Atoll
Chagos Archipelago
Chagos Bank
MAURITIUS
Cauvin Bank
INDIAN OCEAN
75°E
80°E

Figure R4.5

the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles to delimit the continental shelf beyond 200 nautical miles."[219]

4.22 By contrast, in the present case Maldives presents no geographical or other factual considerations that could justify a mere extension of the equidistance line. Nor does Maldives provide any meaningful answer to the point that, as Mauritius explained in the Memorial, there is a fundamental difference between delimitation within and beyond 200 M.[220] In response, Maldives musters nothing more than the conclusory assertion that "[t]his is plainly not the case."[221] It offers no reasoned explanation.

4.23 Nor could it. As Mauritius has previously observed, a coastal State's entitlement to an EEZ and continental shelf within 200 M, and ultimately the delimitation of those maritime zones, is based on coastal geography and distance from the coast.[222] Beyond 200 M, however, a coastal State's entitlement is based exclusively on the natural prolongation of the shelf appurtenant to the coast. That geomorphology-based entitlement extends for however long the shelf extends, subject to the constraints set out in Article 76 of the Convention. As distance from the coast within those constraints is irrelevant to entitlements beyond 200 M, the relative proximity of the entitlements to the respective coastal States' coasts is irrelevant as well. Yet, such proximity is the sole criterion applied by Maldives, in its attempt to obtain a delimitation based on equidistance.

4.24 In the circumstances of the present case, for the reasons explained above, the geomorphological evidence establishes that there exists a single shelf that is the natural prolongation of the respective landmasses of *both* Parties. The part of the shelf that is subject to delimitation is physically connected to Peros Banhos, Salomon Islands, and Blenheim Reef, which are under Mauritian sovereignty. Similarly, on Maldives' side, the delimitation area is physically connected to the islands of Maldives. All of these features were formed by the same geological processes and comprise integral components of the Chagos-Laccadive Ridge. As such, neither Party can assert a superior claim to the area of overlapping entitlements or to any part thereof.

4.25 In the circumstances of the present case, where the Parties have equal entitlements to the continental shelf based on their respective natural prolongations, the equitable solution required by Article 83(1) of the Convention is an equal apportionment of the area. As shown in **Figure R4.6**, this can be achieved by a delimitation that begins at the easternmost point of the delimitation within 200 M and proceeds northeast from that point along an azimuth of 55 degrees. Not only does such a delimitation divide the overlapping continental shelf entitlements beyond 200 M into equal parts, it produces a nearly equal division of the entire area subject to delimitation, both within and beyond 200 M: 50.56% to Mauritius and 49.44% to Maldives.[223]

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[219] *Somalia v. Kenya*, para. 195 (emphasis added).

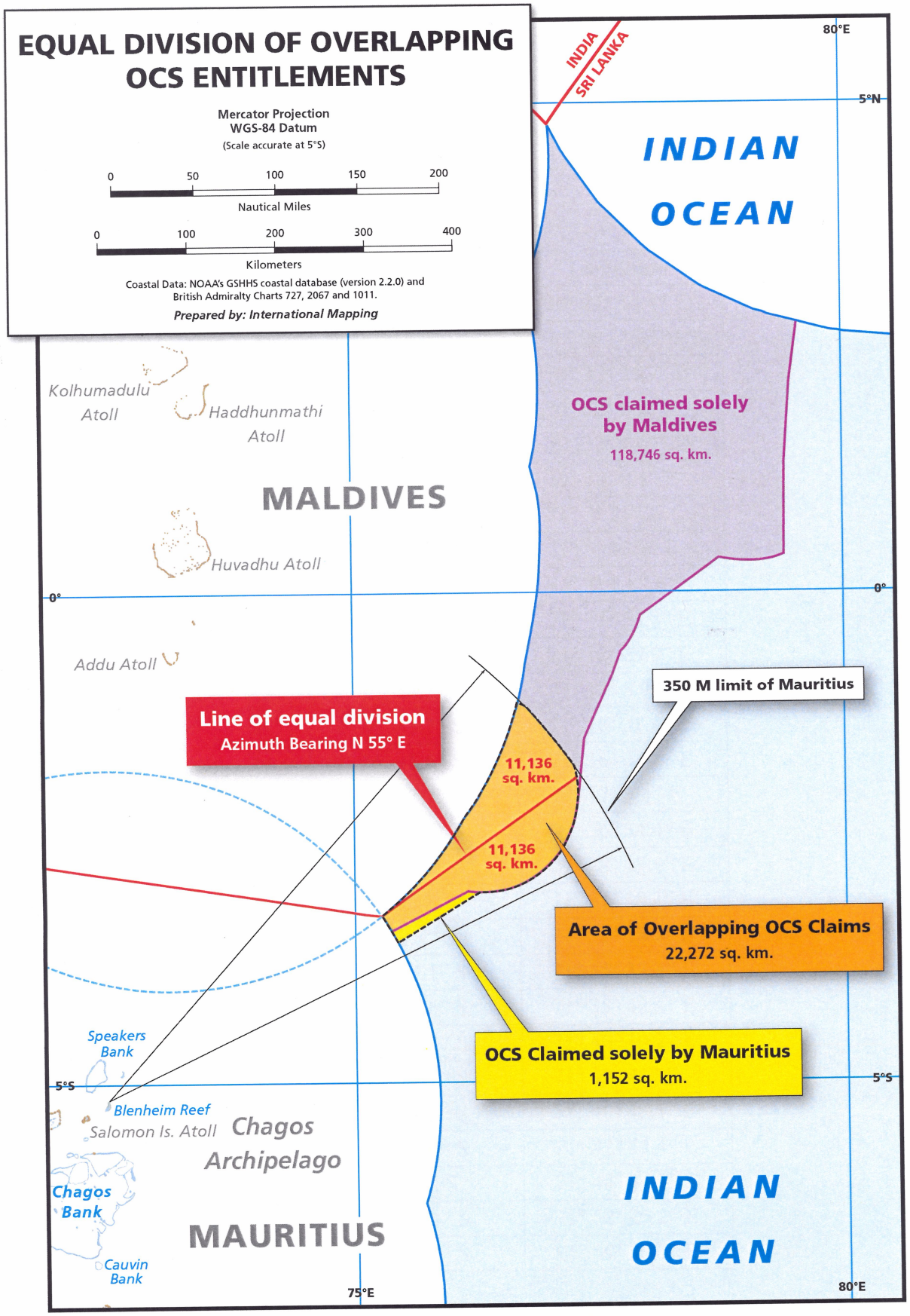
[220] MM, para. 4.72.

[221] MCM, para. 182.

[222] MM, para. 4.72.

[223] *Ibid.*, para. 4.79.

Such a delimitation also satisfies the disproportionality test, without difficulty. The ratio for portions of the entire relevant area is 1.02:1 in favour of Mauritius; the ratio of the Parties' coastal lengths is 1.7:1, also in favour of Mauritius. There is indisputably no gross disproportionality. The delimitation is thus equitable.


EQUAL DIVISION OF OVERLAPPING OCS ENTITLEMENTS
Mercator Projection
WGS-84 Datum
(Scale accurate at 5°S)
0 50 100 150 200
Nautical Miles
0 100 200 300 400
Kilometers
Coastal Data: NOAA's GSHHS coastal database (version 2.2.0) and British Admiralty Charts 727, 2067 and 1011.
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Addu Atoll
350 M limit of Mauritius
Line of equal division
Azimuth Bearing N 55° E
11,136 sq. km.
11,136 sq. km.
Area of Overlapping OCS Claims
22,272 sq. km.
Speakers Bank
OCS Claimed solely by Mauritius
1,152 sq. km.
5°S
Blenheim Reef
Salomon Is. Atoll
Chagos Archipelago
Chagos Bank
MAURITIUS
Cauvin Bank
INDIAN OCEAN
75°E
80°E

Figure R4.6

SUBMISSIONS

On the basis of the facts and law set forth in the Memorial and the Reply, Mauritius respectfully requests the Special Chamber to adjudge and declare that:

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

Point	Latitude	Longitude
1	2° 17' 17.4" S	70° 11' 54.4" E
2	2° 20' 12.2" S	70° 21' 35.7" E
3	2° 22' 0.9" S	70° 27' 36.7" E
4	2° 23' 22.1" S	70° 32' 6.2" E
5	2° 23' 54.8" S	70° 33' 54.9" E
6	2° 25' 11" S	70° 38' 8.1" E
7	2° 32' 47.7" S	71° 3' 25" E
8	2° 33' 30.4" S	71° 5' 45.8" E
9	2° 33' 54.7" S	71° 7' 5.8" E
10	2° 35' 21.9" S	71° 11' 53.8" E
11	2° 35' 32.9" S	71° 12' 29.9" E
12	2° 35' 44.1" S	71° 13' 6.9" E
13	2° 36' 43.7" S	71° 16' 22.4" E
14	2° 36' 45.6" S	71° 16' 28.8" E
15	2° 36' 57.7" S	71° 17' 8.4" E
16	2° 39' 43.9" S	71° 26' 34.4" E
17	2° 40' 14.2" S	71° 28' 17.6" E
18	2° 41' 7" S	71° 31' 18.1" E
19	2° 41' 9.9" S	71° 31' 28.2" E
20	2° 42' 23.1" S	71° 35' 37.3" E
21	2° 42' 24.6" S	71° 35' 42.4" E
22	2° 43' 43.1" S	71° 40' 10.2" E
23	2° 43' 52.1" S	71° 40' 41" E
24	2° 43' 54.2" S	71° 40' 48.1" E
25	2° 44' 28.4" S	71° 42' 44.4" E
26	2° 45' 3.7" S	71° 44' 44.3" E
27	2° 47' 19.4" S	71° 52' 25.2" E
28	2° 48' 23.3" S	71° 59' 20.7" E

29	2° 48' 24" S	71° 59' 25.5" E
30	2° 48' 27.1" S	71° 59' 45.3" E
31	2° 49' 4.8" S	72° 3' 49.2" E
32	2° 49' 58.7" S	72° 9' 37.6" E
33	2° 51' 7.4" S	72° 17' 3.7" E
34	2° 54' 22.7" S	72° 38' 10.6" E
35	2° 55' 29.8" S	72° 45' 29.5" E
36	2° 56' 1.3" S	72° 48' 55" E
37	2° 57' 1.5" S	72° 55' 28.5" E
38	2° 57' 40" S	72° 59' 39.1" E
39	2° 59' 10.4" S	73° 9' 26" E
40	2° 59' 21.7" S	73° 10' 39.2" E
41	3° 0' 19.8" S	73° 16' 55.3" E
42	3° 3' 6.6" S	73° 34' 54.1" E
43	3° 3' 33.6" S	73° 37' 48.6" E
44	3° 5' 11.1" S	73° 48' 18.4" E
45	3° 7' 24.8" S	74° 2' 42.8" E
46	3° 7' 47.2" S	74° 5' 8.1" E
47	3° 7' 51.4" S	74° 5' 35.2" E
48	3° 12' 18.4" S	74° 34' 19.5" E
49	3° 14' 37.7" S	74° 49' 19.9" E
50	3° 16' 50.3" S	75° 3' 21.6" E
51	3° 17' 53.4" S	75° 10' 2.2" E
52	3° 18' 47.5" S	75° 15' 44.3" E
52	3° 18' 47.5" S	75° 15' 44.3" E
53	1° 53' 46.4" S	77° 16' 14.9" E

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

Dheerendra Kumar Dabee G.O.S.K., S.C.
Legal Adviser/Consultant
Agent for the Republic of Mauritius
14 April 2022

CERTIFICATION

I certify that the annexes to this Reply are true copies of the documents referred to.

Dheerendra Kumar Dabee G.O.S.K., S.C.
Legal Adviser/Consultant
Agent for the Republic of Mauritius
14 April 2022

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FIGURES

VOLUME II

FIGURES

VOLUME III

ANNEXES

Annex 1	Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022
Annex 2	Dr. David Dodd, *Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references*, 28 March 2022
Annex 3	Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region (April 2022)
Annex 4	Chagos Archipelago: High-Tide Features Depicted on BA Admiralty Charts 3, 725, 726 and 727
Annex 5	US Department of State Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas*, No. 140 (Mauritius) (July 2014)
Annex 6	International Law Association, *Baselines under the International Law of the Sea: Final Report* (2018)
Annex 7	Note Verbale dated 1 December 2021 from the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius to the Ministry of Foreign Affairs of the Republic of Maldives
Annex 8	Letter dated 12 January 2022 from the Agent of the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea
Annex 9	Letter dated 13 January 2022 from the Agent of the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea
Annex 10	Note Verbale dated 13 January 2022 from the Ministry of Foreign Affairs of the Republic of Maldives to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius
Annex 11	Letter dated 17 January 2022 from the Agent of the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea