INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2022

Public sitting

held on Saturday, 22 October 2022, at 3 p.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Jin-Hyun Paik, presiding

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

(Mauritius/Maldives)

Verbatim Record

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

Present:	President	Jin-Hyun Paik
	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
		Neeru Chadha
	Judges *ad hoc*	Bernard H. Oxman
		Nicolaas Schrijver
	Registrar	Ximena Hinrichs Oyarce

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and

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THE PRESIDENT OF THE SPECIAL CHAMBER: Good afternoon. The Special Chamber will continue today its hearing on the merits in the *Dispute Concerning the Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean*. We meet this afternoon to hear the second round of oral argument of Mauritius. I now give the floor to Mr Sands to make his statement.

MR SANDS: Mr President, Members of the Special Chamber, we have now had a chance to listen to our colleagues and friends from the Maldives, and it is apparent that there are three sets of issues that divide the Parties: first, should basepoints and baselines be drawn on and around Blenheim Reef? Second, does the Special Chamber have jurisdiction to address the claims put by Mauritius in respect of an extended continental shelf to the north of the Chagos Archipelago, and if so, is there a bar to the exercise of that jurisdiction? And third, if the Special Chamber has such jurisdiction and the claims are admissible, what are the merits of those claims and how should the Tribunal delimit the extended continental shelf?

I will address the first point; Professor Klein will address the second; and Mr Loewenstein will address the third. Then the Co-Agent of Mauritius, Ambassador Koonjul, will offer a few concluding remarks before reading the final submissions of Mauritius. We hope to finish by six o'clock or thereabouts.

We listened with much appreciation also to the presentations of Ms Shaany and Ms Shabeen, on the circumstances in which Maldives declined to allow Mauritius to conduct its survey of Blenheim Reef from the Maldives, and the Maldives' expression of commitment to the conservation of the marine environment. We hope that the Special Chamber might understand why we see no need to offer any detailed response to those presentations.

Suffice it to say, Mauritius greatly appreciates the role played by the Special Chamber and ITLOS in fostering a spirit of greater harmony and cooperation between the Parties. Your judgment on jurisdiction was significant in breaking a deadlock and in contributing to the rule of international law on maritime and appurtenant matters.

In this regard, the Special Chamber already has before it a great deal of evidence, introduced by the Parties in the course of the written pleadings. As noted in our letter to the Tribunal sent yesterday, Sir, in the course of its submissions this week, Maldives presented new material of a scientific and technical nature, for example bathymetric data, the source of which was described as having been, and I quote, "produced for hearing by GeoLimits Consulting".[1] In accordance with established practice of international courts and tribunals, Mauritius would be entitled to object to the introduction of this material at this stage of the proceedings, as some of the material newly presented is not to be found in the written record and its public provenance is not clearly indicated. However, given the warm spirit of cooperation that has informed the attitude of both Parties, and with the aim of assisting the Special Chamber, which presumably would want more available to it rather than less, Mauritius will not object to the introduction of this new material. This, of course,

[1] Maldives' PowerPoint slides, provided to Mauritius, do not contain figure numbers, such that it is not possible to list those slides which contain new evidence.

is on the understanding that it is able to respond to the issues raised by that new material later this afternoon so that the principle of equality of arms is fully respected.

I turn now to Blenheim Reef, the first issue. We have now heard, rather clearly, why Maldives says that Blenheim Reef should be excluded entirely from the process of delimitation, up to 200 nautical miles and beyond, and no basepoints should be placed on or near it.

Mr President, Members of the Special Chamber, on Thursday we listened with considerable interest to Maldives explain its assertion that Blenheim Reef is not a single feature – whether a drying reef or a low-tide elevation – but is actually 57 separate features.[2] That assertion is, to put it generously, perhaps a bit of a stretch. We noted that Professor Thouvenin and his colleagues declined to engage with any of the evidence or arguments we presented. We had shown you that Blenheim Reef is indeed a single, consolidated mass, a single reef. It is so depicted, as you can see, on every nautical chart we have been able to find, the most recent updated in 2017, and that is further evidenced by satellite images from 2021.

Counsel for Maldives had nothing really to say about this evidence. One of their counsel casually dismissed the material as being between 24 and 58 years old, but I would say this is not quite true.[3] The BA and Russian charts were updated in 2017, the Indian chart in 2005; and the satellite images are from last year. On Monday we told you that there was no cartographic, geographic or hydrographic evidence, and no expert testimony or report presented to support the claim that Blenheim Reef is 57 different features. The response from Maldives? Silence, unless you treat the counting of red dots on a white page as an exercise in evidentiary analysis. We say that there is no support for this wholly novel and unprecedented argument.

Let us look a little bit more closely at the red dots theory, a single image, reflecting satellite derived bathymetry, produced by a company called EOMAP, in advance of Mauritius' February 2022 survey.

Counsel for the Maldives took it from an annex to the geodetic survey that was itself an appendix to Mauritius' Reply.[4] You can see that on the screen. The Maldives says that the red dots on this image allegedly represent those parts of the reef exposed at approximately low tide, when the image was taken. You can see the image of the reef itself, below the red dots. This is the slide of the same image that Professor Thouvenin displayed on Thursday. Yet the illustrative material is an artifice: the underlying image of Blenheim Reef has been sort of airbrushed away, so all you see are 57 separate red splotches, apparently unconnected and distinct. In contrast, as you can see, the original, undoctored image makes it clear that all the red dots are in fact connected, and they are part of a single feature. Blenheim Reef is one feature, not 57. You will note that the complete image shows that Professor Thouvenin's theory on the presence of channels between the supposedly distinct features is entirely without merit.[5]

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[2] ITLOS/PV.22/C28/3, p. 10-11 (Akhavan); TIDM/PV.22/A28/3, p. 27-28 (Thouvenin).
[3] ITLOS/PV.22/C28/3, p. 10 (lines 25-26) (Akhavan).
[4] ITLOS/PV.22/C28/3, p. 11 (lines 1-9) (Akhavan).
[5] TIDM/PV.22/A28/3, p. 30-31 (Thouvenin).

1 You have seen on your screens this image from the survey report of the February
2 2022 mission.[6] It is a recent and accurate depiction of the drying areas at a particular
3 moment in time, and it plainly shows the connection of the drying parts to the
4 underlying reef. It shows that a majority of the single feature's circumference was
5 exposed at low tide. But Maldives ignored it entirely both in their Rejoinder and their
6 opening round.
7
8 Of course, Blenheim Reef is no different from other similar large drying reef features.
9 On Monday we took you to the *South China Sea* arbitration. The Annex VII tribunal
10 determined that Mischief Reef, which you can see on the right, and it is about the
11 same size as Blenheim Reef, and Second Thomas Shoal consisted of drying rocks –
12 you can see now the Second Thomas Shoal; it is slightly larger than Blenheim Reef.
13 The tribunal said these consisted of drying rocks, rocks exposed during half-tide and
14 a number of drying patches.[7]
15
16 Yet, despite having multiple parts above water at low tide, each of these features
17 was treated by the arbitral tribunal as a single feature. The number of exposed parts,
18 or their extent, was totally immaterial. What mattered was that the different parts
19 were connected, were part of a single maritime feature.
20
21 What did Maldives have to say about these features or the approach of the tribunal
22 in the *South China Sea* case? Nothing. Has Maldives been able to point to any other
23 feature of this nature which has been treated by an international court or tribunal as
24 being many individual parts rather than the sum? It has not. The *South China Sea*
25 award is totally inconsistent with Professor Thouvenin's assertion that article 13 of
26 the Convention requires you to treat each protruding point of a single feature as a
27 separate LTE, regardless of its geological or physical reality.
28
29 Blenheim Reef is a single feature. It is large, but it is no larger than many other such
30 features, including some I am going to refer to later this afternoon, all of which are
31 treated by all persons as single features. Blenheim Reef runs for some 9.6 km north
32 to south, and 4.7 km east to west, and it is an integral part of Mauritius' coast, within
33 the meaning of article 13 of UNCLOS and the case law, since a part of it is located
34 within 12 nautical miles of Takamaka Island. As the International Court of Justice
35 explained in *Qatar* v. *Bahrain* in relation to low-tide elevations: "The relevant rules of
36 the law of the sea explicitly attribute to them that function [that they are part of a
37 State's legal coastline] when they are within a State's territorial sea."[8] Maldives failed
38 to engage with this passage from a judgment that it itself has relied on in its
39 Rejoinder.
40
41 Mr President, you will have worked out why Maldives has taken this very creative but
42 entirely unprecedented approach. We are confident that the Special Chamber will
43 not be taken in by the artifice, nor we suspect would you wish to set a precedent that
44 departs from all geological, geographic, political and legal reality.
45

[6] Mauritius' Reply, Vol. 3, Annex 1, Appendix 1.
[7] ITLOS/PV.22/C28/1, p. 24 (lines 30-36) (Parkhomenko), citing *The South China Sea Arbitration (Philippines* v. *China)*, PCA Case No. 2013-19, Award (12 July 2016), paras. 377-379.
[8] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, para. 204.

I turn to a second point in relation to our article 13 argument. On Monday we challenged Maldives' claim that, under the case law, basepoints may never be placed on low-tide elevations. We addressed three cases cited by Maldives and showed that none supported the proposition that basepoints may never be placed on an article 13 LTE, or for that matter an article 47, paragraph 4, LTE,[9] although as I will say shortly, that provision is of no pertinence whatsoever to this case. To the contrary, in each of the three cases, the decision not to place a basepoint on an LTE was explicitly based on the specific geographic circumstances of the case, and whether, in those circumstances, the basepoint would have had a disproportionate effect on the drawing of the equidistance line, rendering it prejudicial or inequitable to the other party. In Mauritius' submission, that is what the law is.

On Thursday, Maldives sought to respond. Did they regret citing *Qatar* v. *Bahrain* in the written pleadings, given how little they had to say about it on Thursday or Friday? If so, it would be with good reason. The ICJ declined to put basepoints on two LTEs only because they were located within 12 nautical miles of both States, so they sort of cancelled themselves out.[10] That is a very different geographical circumstance from ours.

As regards *Somalia* v. *Kenya*, Maldives did not seek to refute our argument, based on the language of the ICJ's judgment, that it rejected Somalia's basepoints on small islands and one LTE only because of the prejudicial impact of those basepoints on the equidistance line in the territorial sea. Professor Thouvenin sought to make something out of the fact that the Court did not use those basepoints for delimitation beyond the territorial sea, out to 200 nautical miles.[11] But the reason is obvious. If the basepoints caused prejudice in the territorial sea, how could you eliminate them for that purpose and then somehow restore them for the delimitation beyond 12 nautical miles?

The only other case invoked by Maldives is *Bangladesh* v. *India*. We already showed you on Monday that the Tribunal was not convinced in that case that New Moore, or South Talpatty, was an LTE, and that the Tribunal preferred to place the basepoints on the coasts.[12] Preferring basepoints on the coast, the Tribunal also denied India a basepoint on another tiny LTE – depicted on this slide as I-3, on the slide you can now see – located approximately 12 nautical miles from the coast. In so doing, the Tribunal stated that in its view, "India's proposed basepoints are not acceptable because they are located on low-tide elevations."[13] In Mauritius' submission, the soundness of that approach is apparent if you consider the effects on the equidistance line, including far beyond the territorial sea, of allowing basepoints on New Moore/South Talpatty and on the low-tide elevation south of Dalhousie Island. That this would have been highly prejudicial to Bangladesh is obvious from this slide because those LTEs pushed the equidistance line across Bangladesh's coast, inequitably cutting it off from its maritime entitlements.

[9] ITLOS/PV.22/C28/1, p. 25-28 (Parkhomenko).
[10] ITLOS/PV.22/C28/1, p. 25-26 (Parkhomenko).
[11] TIDM/PV.22/A28/4, p. 2 (Thouvenin).
[12] ITLOS/PV.22/C28/1, p. 26 (lines 28-33) (Parkhomenko) citing *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 262.
[13] *Bangladesh* v. *India*, para. 362.

Professor Thouvenin devoted much attention to a fourth case, the *Violations* case between Nicaragua and Colombia,[14] where the ICJ acknowledged that in a prior case between the same parties, it had placed a basepoint on Edinburgh Reef, a low-tide elevation. We showed you the Court's sketch map from the 2012 judgment. Maldives seems to have been troubled by that sketch map, taking you all the way back to the 2007 case between Nicaragua and Honduras – a case that I recall well, as I was counsel for Honduras – when the Court placed a basepoint on this feature, and then its decision in 2012, when it had not decided whether it was an LTE or a small islet. It only recognized that it was an LTE in the subsequent *Violations* case, when Colombia proved it to be such in opposing Nicaragua's straight baseline claim.

Mr President, the relevant facts are beyond dispute. First, the Court expressly recognized in its 2022 judgment in the *Violations* case that in its 2012 judgment it had "placed a basepoint on this feature for the construction of the provisional equidistance line."[15] Second, the Court defended that decision, even as it denied Nicaragua's straight baseline claim, on the ground that "there are serious reasons to question the nature of Edinburgh Cay as an island for the purpose of article 7, paragraph 1, of UNCLOS."[16] The Court explained that:

> [t]he issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying basepoints for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the Exclusive Economic Zone between adjacent or opposite States are two different issues.[17]

Third, and critically, the Court's decision to place a basepoint for delimitation purposes on Edinburgh Reef in 2012, despite conflicting evidence as to whether it was above water at low tide, fully supports Mauritius' view of the law. The key issue is not whether the feature is a small islet, a rock or an LTE; it is the impact of the feature on the equidistance line and whether that impact is disproportionate to the significance of the feature and inequitable to the other party. In its 2012 judgment, the Court determined, based on these geographic circumstances, in the context of two States with opposite coasts, to place a basepoint on the feature.

The same approach was taken by the Court in *Somalia* v. *Kenya*, which also did not distinguish between Somalia's small islands, LTE or even its coastal headland at Ras Kaambooni. What concerned the Court was not the nature of each of these features but their impact on the delimitation. This is a well-established approach. As Professor Bowett concluded in his 1993 study on islands, rocks, reefs and low-tide elevations, "all of these features will be valid for use as basepoints, in conjunction with the equidistance method, where they can be regarded as forming an integral part of the coast."[18]

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[14] TIDM/PV.22/A28/4, p. 3-5 (Thouvenin).
[15] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia),* Judgment, 21 April 2022, para. 250.
[16] *Ibid.*, para. 251.
[17] *Ibid.*, para. 250 citing to *Maritime Delimitations in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* p. 108, para. 137.
[18] D. Bowett, 'Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations', in J. I. Charney and L. M. Alexander (eds.), *International Maritime Boundaries, Vol. I* (1993), p. 151.

1 In sum, there is not now, and has never been, any rule against putting basepoints on
2 low-tide elevations, in appropriate geographic circumstances.
3
4 I turn to my third point on article 13: its impact on the delimitation in the geographic
5 circumstances of this case. The evidence before the Special Chamber, including that
6 presented by Maldives, fully demonstrates that Blenheim Reef's impact on the
7 delimitation in this case is neither disproportionate to its significance as an integral
8 part of Mauritius' coast, nor inequitable to the Maldives.
9
10 This is the slide we showed on Monday, illustrating the actual impact of Blenheim
11 Reef on the equidistance line. There is no impact at all until a point that is
12 145 nautical miles from the Parties' opposite coasts. It pushes a segment of the line,
13 but not all of it, and only very slightly, to the north, giving Mauritius an extra 4,690
14 square kilometres of sea, so about 5 per cent of the total. The effect we would
15 submit is *de minimis*, by any reasonable standard.[19] Maldives has not really argued
16 otherwise.
17
18 Nor can the effect of Blenheim Reef be discounted on the ground that it is
19 inequitable to Maldives. There is plainly no cut-off effect. Maldives accepts that there
20 is no disproportionality, that our delimitation line, giving full effect to Blenheim Reef,
21 passes the disproportionality test.
22
23 The obvious conclusion, Mr President and Members of the Special Chamber, is that
24 Blenheim Reef is to be treated as a single low-tide elevation under article 13 of the
25 Convention, or under article 47, paragraph 4, of the Convention. It does form part of
26 the coast of Mauritius and the Chagos Archipelago, and four basepoints are properly
27 to be placed upon it in drawing a provisional equidistance line; and so Blenheim Reef
28 must be given full effect. Moreover, as the two Parties pretty much seem to agree –
29 Professor Thouvenin offered a kind of gentle justification for an adjustment,[20] but one
30 is bound to say that he did not give the impression that his heart was fully in that
31 submission – there is no reason to make any adjustment to that line, since the effect
32 of taking Blenheim Reef into account is rather modest.
33
34 That is what we say you can rule on article 13 if you need to. But let us not stop
35 there. We also say you do not have to go through that exercise or those issues at all.
36 In application of the principle of the path of least resistance, to which international
37 judges and arbitrators are much attached – I speak for myself as an occasional
38 arbitrator – there is a far cleaner and simpler way for you to reach the obvious and
39 right conclusion: you take Part IV of the Convention and you apply it to the drying
40 reef that is Blenheim Reef and to the archipelagic baselines drawn around that single
41 feature and – Bingo! – we and you and everyone are home and dry.
42
43 In short, Maldives really only offers only a single argument in relation to Part IV. On
44 Thursday they said you should proceed on the basis of the text you can see on the
45 screens before you, article 47, paragraph 4, and treat Blenheim Reef not as a single
46 drying reef but as a multitude of low-tide elevations, none of which has a lighthouse
47 on it, and the relevant ones of which are more than 12 Miles from Takamaka

[19] ITLOS/PV.22/C28/1, p. 28 (lines 32-44) (Parkhomenko); ITLOS/PV.22C28/2, p.1 (lines 45-47) (Reichhold).
[20] TIDM/PV.22/A28/4, p. 5-6 (Thouvenin).

1 Island.[21] With great respect, that argument is manifestly wrong. It is wrong because
2 article 47, paragraph 4, is inescapably not applicable to this case, and it is wrong
3 because even if it were applicable, which it is not, Blenheim Reef is a single feature
4 and a part of it does lie within 12 Miles of Takamaka Island – that is not in dispute –
5 which means you can use any part of it to construct the provisional equidistance line
6 that defines the maritime boundary between Maldives and Mauritius.
7
8 Today, I am going to limit myself to the first point: article 47, paragraph 4, is not
9 applicable at all to Blenheim Reef because it is a drying reef within the meaning of
10 article 47, paragraph 1; it is not merely a low-tide elevation within the meaning of
11 article 47, paragraph 4.
12
13 Ms Sander offered a single authority in support of Maldives' proposition that
14 article 47, paragraph 4, is applicable to Blenheim Reef because it is a low-tide
15 elevation within the meaning of that provision. She cited the Virginia Commentary,
16 which says "drying reefs are 'low-tide elevations' within the meaning of article 13 and
17 would be subject to the related requirement contained in article 47(4)".[22] The
18 commentary goes on to state that article 47, paragraph 4, "is applicable to the 'drying
19 reefs' referred to in paragraph 1."[23] Is that commentary dispositive of the matter?
20 The Virginia Commentary, of course, has a certain authority, but it is not dispositive
21 and sometimes it gets things wrong, and occasionally it gets things very wrong, and
22 this is one such occasion.
23
24 I wonder if Ms Sander noticed, as we did when we first looked at the sentence in the
25 commentary on which she places exclusive reliance, that it has no footnote after it
26 and it has no source to support the proposition that it makes. In life we learn that the
27 absence of a footnote is wont, sometimes, to set the heart aflutter and to get alarm
28 bells ringing. Did she or Professor Thouvenin pause to consider what the absence of
29 a footnote might actually mean? Did they consider digging a little further, as we did?
30 I noticed that Professor Thouvenin urged the Tribunal to apply the *effet utile* principle
31 in interpreting the Convention.[24] I noticed that Professor Mbengue called for a strict
32 and rigorous interpretation of the Convention.[25]
33
34 Now, these are all superb lawyers, and they will have known as much as anyone that
35 when the drafters of UNCLOS used the words "drying reef" in article 47,
36 paragraph 1, rather than "low-tide elevation", it is likely, or even probable, that they
37 must have done so for a reason. *Expressio unius est exclusio alterius*, my first
38 professor in law, Professor Jennings, used to tell us when we were his law students:
39 the expression of one thing is the exclusion of the other. It is reasonable to proceed
40 on the basis that when the drafters decided to use "low-tide elevation" in article 47,
41 paragraph 4, rather than "drying reef", they probably did so upon reflection. I am sure
42 that everyone in this room will agree that, at the very least, it is striking, or odd even,
43 that the drafters should decide in article 47, paragraph 1, that you can draw a
44 straight archipelagic baseline from the outermost drying reef, but then to say in

[21] ITLOS/PV.22/C28/4, p. 8 (lines 34-44) (Sander).
[22] ITLOS/PV.22C28/4, p. 9 (lines 7-14) (Sander), citing to UNCLOS Commentary, p. 430-431, paras. 47.9 (b) and 47.9(f).
[23] *Ibid.*
[24] TIDM/PV.22/A28/3, p. 33 (lines 21-32) (Thouvenin).
[25] ITLOS/PV.22/C28/4, p. 32-44 (Mbengue).

1 article 47, paragraph 4, that you cannot draw a straight baseline from the outermost
2 low-tide elevation. That is, frankly a bit weird, is it not? I have learned in life that
3 when things seem weird it is usually a good idea to dig a little deeper. So let us dig a
4 little deeper.
5
6 Let us begin with an article written by Commander Peter Bryan Beazley, which he
7 published in 1991 in the *Journal of Estuarine and Coastal Law*.[26] As you can see on
8 your screens, he gave the article, which is available online, the title *Reefs and the*
9 *1982 Convention on the Law of the Sea*. Now, as many of you on the Bench know,
10 Commander Beazley was not just anybody. Commander Beazley served as
11 a Commander in the Royal Navy; from 1963 he advised the United Kingdom Ministry
12 of Defence on technical aspects of determining limits and boundaries of offshore
13 zones of jurisdiction for the United Kingdom and Colonies, and for assessing the
14 claims of other States, and from 1973 to 1982 he was an adviser to the UK
15 delegation at the Third United Nations Conference on the Law of the Sea. In 1984 he
16 was appointed, jointly, by the United States and Canada, as the technical expert to
17 assist the International Court of Justice in the *Gulf of Maine* case.[27]
18
19 His article – and it was put in the folders, so you should be able to read it all – first
20 addresses reefs in article 6 of the Convention, and he then turns to reefs in Part IV,
21 and in particular our article 47. It is detailed, carefully researched and based on his
22 direct experience. I do not have time to go into all the details, but you can read it, it is
23 at tab 10. May I say, it bears careful reading. Let us go to the relevant parts. Let us
24 go to page 306 of the article, where he addresses the negotiating history of
25 article 47. What he says is:
26
27 At the second session of the UNCLOS Conference at Caracas in 1974 a
28 working paper submitted by Canada, Chile, Iceland, India, Indonesia,
29 Mauritius, Mexico, New Zealand and Norway again included drying reefs
30 without qualification.[28]
31
32 Let us pause there for a moment and look at the actual text submitted by those
33 countries. You will see that on the screens now, and you can see, in the top right-
34 hand corner, it was submitted, in English, on 26 July 1974. Its draft article 6(1) says:
35
36 An archipelagic State may employ the method of straight baselines joining
37 the outermost points of the outermost islands and drying reefs of the
38 archipelago in drawing the baselines from which the extent of the territorial
39 sea, economic zone and other special jurisdictions are to be measured.[29]
40
41 Now let us go back to Commander Beazley, who continues:
42
43 At the same session the Bahamas submitted draft articles which included
44 a paragraph [and I am going to read it out] "1. In drawing the baselines ...
45 an archipelagic State may employ the method of straight baselines joining

[26] P.B. Beazley, Reefs and the 1982 Convention on the Law of the Sea, *International Journal of Estuarine and Coastal Law* (1991), 6(4), 281-312.
[27] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984*, p. 165.
[28] Beazley, p. 306, citing document A/CONF.62/C/2/L.4.
[29] Document A/CONF.62/L.4.

1 the outermost points of the outermost islands and drying reefs or low-tide
2 elevations of the archipelago or may employ any non-navigable continuous
3 reefs or shoals lying between such points."[30]
4
5 You will have noted the addition of the words "or low-tide elevations". I have dug up
6 the original text – it is online – and you can see it on your screens now. You will see
7 that this draft, the Bahamas draft, was submitted in English, on 20 August 1974,
8 a month after the text proposed by Canada and eight other countries. Did it find
9 favour with the negotiators? It did not. The drafters explicitly excluded any reference
10 to low-tide elevations in article 47, paragraph 1.
11
12 Let us go back to Commander Beazley's interpretation of this difference. It is in
13 highlight at the bottom of the screen. "This draft clearly distinguishes between drying
14 reefs and low-tide elevations."[31] That is Commander Beazley.
15
16 Now let us turn to Commander Beazley's general conclusions. He set out three
17 reasons for which the UNCLOS drafters decided to include a special rule for drying
18 reefs – one that did not apply at all to all low-tide elevations:
19
20 Given the security implications that arise from the existence of an emergent
21 coral reef within the geographical unity of an archipelago there is certainly
22 need to include it within the archipelagic waters. Another practical
23 consideration is that, if the drying reefs of an atoll, or of an island with
24 fringing reefs, forming part of the archipelago lie more than 12 miles from
25 the low-water line of the islands or island, they would be baselines under
26 article 6. It would therefore be illogical for them to be excluded as
27 archipelagic basepoints. Similarly it could not be the intention that in
28 applying article 47(7) to determine the water to land ratio, some of the
29 fringing reefs of islands and atolls might lie outside the archipelagic
30 baselines.[32]
31
32 He ends with these words, and I invite you to read them very carefully.
33
34 The conclusion is inescapable, that the inclusion of drying (coral) reefs as
35 basepoints is not to be limited by the provisions of paragraph 4, but only by
36 articles 46(b) and by paragraphs 1 2 3 and 5 of article 47.[33]
37
38 In other words, Professor Thouvenin, Ms Sander and the Maldives have fallen into
39 inescapable error. Inescapable. That is a pretty strong word for a retired British naval
40 commander who was, for those who knew him, certainly not prone to the language of
41 excess.
42
43 The conclusion is very obviously correct and I could end my submissions on this
44 note – but I will not. Let us go further, for there is more that should interest the
45 Special Chamber. What more could we want, you may ask. What States actually do,
46 I say to you. For what States actually do offers incontrovertible support to the
47 submission that I put to you in the first round and to the views of Commander

[30] Beazley, p. 306-307, citing document A/CONF.62/C.2/L.70.
[31] Beazley, p. 307.
[32] *Ibid.*
[33] *Ibid.*

1 Beazley. For what archipelagic States actually do in practice is to use drying reefs
2 located more than 12 Miles from an island to locate their turning points, and what
3 other States do is (a) not object, and (b) positively affirm that practice. The practice
4 makes it crystal clear that Mauritius' approach is fully consistent with the 1982
5 Convention, Part IV and article 47, in particular, paragraph 1.
6
7 Let us take three examples in the time that is available. Let us start with Fiji, in the
8 Pacific Ocean. On your screens, you can see shaded in blue, on a chart, the area
9 enclosed by Fiji's archipelagic baselines.[34] Here, in the northern part, circled in red,
10 is the Great Sea Reef – a single feature, I would note. You will note that it is shown
11 here as a single feature, not as dozens or hundreds or thousands of low-tide
12 elevations.
13
14 Now you can see on a satellite image highlighting turning points 30 and 31 on the
15 baseline. Now let us zoom in on those turning points. You can see that, very plainly,
16 there are no islands located there. Now let us superimpose a chart. You can see
17 points 30 and 31 on DMA Nautical Chart 83034. This shows points 30 and 31
18 located on the drying reef and, with a black line, the distance from the nearest island.
19 Point 30 is 21.8 Miles from Yandua Island and point 31 is 16.6 Miles from the
20 nearest island. In short, a drying reef located more than 12 Miles from an island, with
21 no lighthouse on it, is utilized on the basis of article 47, paragraph 1, not article 47,
22 paragraph 4.
23
24 What has been the international reaction to this? No objection. To the contrary. This
25 is the cover of the U.S. Department of State's Bureau of Intelligence and Research's
26 Limits in the Seas, report number 101, on Fiji's Maritime Claims that I have just
27 shown you. At page 3 you can see highlighted the text of article 47, paragraph 1, of
28 the Convention, not 47, paragraph 4, and then the conclusion, and I quote: "It would
29 appear that Fiji's archipelagic baseline system meets these requirements" – a
30 reference to 47, paragraph 1 − noting that "30 of the 34 baseline turning points seem
31 to be located on drying reefs" – and that includes points 30 and 31. This conclusion
32 is completely consistent with that of Commander Beazley on the principles to be
33 applied and on the application of those principles by Mauritius to Blenheim Reef.
34
35 I turn next to the second example. Here you can see the Solomon Islands, also in
36 the Pacific. You can see that country's system of archipelagic baselines, with
37 Rennell Island highlighted. As we zoom in, you can see the archipelagic baselines
38 around Rennell Island, with highlights in red circles on North Reef – a single feature,
39 Middle Reef – a single feature, and South Reef – a single feature. Together they are
40 known, delightfully, as the Indispensable Reefs. Incidentally while I'm on this point, I
41 might also add that Middle Reef in the Rennell Archipelago is about six or more
42 times the size of Blenheim Reef. It measures 58 km tip-to-tip, and it is treated as a
43 single feature, compared to Blenheim Reef's north-south measurement of 9.6 km.
44
45 Now we see Rennell Island and the three separate reefs on BA Chart 4634. You will
46 note again, that each of these reefs is depicted as a single feature, not made up of
47 millions of different LTEs that pop up and down as the tides rise and fall. Now we

[34] U.S. Department of State, Limits in the Seas, No. 101 Fiji's Maritime Claims (Nov. 1984), p. 37, available at https://www.state.gov/wp-content/uploads/2019/12/LIS-101.pdf (last accessed 21 October 2022).

see the archipelagic baselines drawn onto that chart. I invite you to look at turning points 39 and 42. And now let us look at the distances: point 39 is 37.3 miles from Rennell Island, and point 42 is 69.5 Miles from Rennell Island. So, once again, in short, two drying reefs located more than 12 Miles from an island, with no lighthouse on it, are utilized on the basis of article 47, paragraph 1 – exactly what Mauritius has done.

What has been the international reaction to this? Again, no objection. This time we are looking at the cover of the U.S. State Department's Bureau of – renamed – Oceans and International Environmental and Scientific Affairs, Limits in the Seas, volume number 136, on the Solomon Island's maritime claims that I have just shown you.[35] At page 4 you can see the conclusion, and I quote:

> The configuration of the baselines does not appear to depart to any appreciable extent from the general configuration of the archipelago […]. None of the baselines appears to be drawn using low-tide elevations.

Once more, the conclusion is crystal clear: there is distinction between drying reefs, on the one hand, and low-tide elevations, on the other, and there is no bar to a drying reef being used even when it is 69 Miles from the nearest island. Again, this is completely consistent with the views of Commander Beazley on the principles to be applied and on the application of those principles by Mauritius to Blenheim Reef. They do not say, any of these people − not Commander Beazley, not the U.S. Department of State − that we are dealing here with thousands of distinct, low-tide elevations. Inescapably, it might be said, the Indispensables are in full conformity with the 1982 Convention.

I turn now to a third example, Comoros, located at the northern end of the Mozambique channel in the southern Indian Ocean. In 2010 Comoros established an archipelagic baseline system composed of 13 line segments, as you can see on the screens. If you look at Segment A to B, on the left side of the screen, you will see that it runs from the island of Grand Comore to Banc Vailheu, a distance of 13 Miles. The U.S. Department of State has reviewed these archipelagic baselines[36] and concluded that they are consistent with article 47, but with one exception. Report 134 says:

> Comoros' use of baseline point B on Banc Vailheu is not consistent with article 47.1, in that this feature is not among the outermost islands or drying reefs of the archipelago, nor does it fall under an exception under article 47.4 relating to low tide elevations. Banc Vailheu is neither an island nor a low-tide elevation, but rather an underwater feature. There does not appear to be any land or drying reef in the vicinity of Banc Vailheu.

The view of the U.S. Department of State is clear, in Limits in the Seas, number 134 at page 2: if Banc Vailheu was a drying reef, article 47, paragraph 1, would have

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[35] Bureau of Intelligence and Research, U.S. Department of State, Limits in the Seas, No. 136 Solomon Islands: Archipelagic and other Maritime Claims and Boundaries (Mar. 2014) available at https://www.state.gov/wp-content/uploads/2019/12/LIS-136.pdf (last accessed 21 October 2022).
[36] Bureau of Intelligence and Research, U.S. Department of State, Limits in the Seas, No. 134 Comoros: Archipelagic and other Maritime Claims and Boundaries (Mar. 2014) available at https://www.state.gov/wp-content/uploads/2019/10/LIS-134.pdf (last accessed 21 October 2022).

allowed it to have been used notwithstanding the fact that it is more than 12 Miles from Grand Comore. This offers further confirmation that Commander Beazley's interpretation of article 47, paragraph 1, and that of Mauritius, is correct.

Allow me to summarize. The ordinary meaning of article 47 is clear: a drying reef is a drying reef and a low-tide elevation is a low-tide elevation. As the *travaux préparatoires* makes clear, the drafters of the 1982 Convention chose their terms with great care. The Bahamas tried to insert all low-tide elevations into what became 47, paragraph 1, and that effort failed. The drafters intended to draw a distinction between a low-tide elevation, on the one hand, and a drying reef, on the other. Commander Beazley gave you three reasons why, and subsequent practice, as I have shown, confirms his approach.

It follows from this that Mauritius was perfectly correct and entitled to use the outermost points of Blenheim Reef, which the charts, the survey and the satellite images, indisputably, established to be a drying reef. Mauritius is entitled to use, as one of the joining points of its archipelagic baselines, those four points close to Blenheim Reef, in accordance with article 47, paragraph 1. The fact that it, or any part of it, is more than 12 Miles from Takamaka Island, is totally irrelevant. In this way, you do not need to address article 47, paragraph 4, at all, as the rule there stated does not need to be invoked. But even if you did, the exception to the general rule cuts in, as I have already said, as a part of Blenheim Reef it is within 12 Miles of the nearest island. In this way too, interesting as the article 13 arguments might have been, you just do not need to go there.

Moreover, as article 48 makes clear, Mauritius's territorial sea, EEZ and continental shelf shall be drawn from the archipelagic baseline drawn around Blenheim Reef. To be clear, I submit there is simply no way around that conclusion. It is self-evidently the correct conclusion.

If the Special Chamber were to somehow come to a different conclusion on the interpretation and application of article 47, it would drive a coach and horses through article 47. The Special Chamber would, in effect, be telling Fiji and the Solomon Islands to go back to the drawing board. The Special Chamber would, in effect, be telling the U.S. State Department's various bureaus that over forty years of practice it has fallen into error. And you would need, somehow, to tell your readers why Commander Beazley's interpretation is wrong.

Mr President, Members of the Special Chamber, you will have noticed that the autumn air has inspired in me a fondness for maxims. Let me end with one of my very favourites: when you are in a hole, stop digging! Maldives has given you nothing to counter these arguments on the application of article 47, paragraph 1, to Blenheim Reef. It plainly applies, and the consequences of its application follow inexorably from the provisions of Part IV. I do not expect Maldives to somehow give up on Monday, but I truly do not envy them the mountain that they must now climb.

With that, Mr President, Members of the Special Chamber, I conclude my submissions. May I, as I customarily do, thank my colleagues, in particular Anjolie Singh and Remi Reichhold, for all their assistance in the preparation of my submissions.

Mr President, with your permission, may I just take this opportunity to express my deep respect and appreciation for a very good friend who is not with us today, and that is Professor Alan Boyle, who I have worked with for more than three decades, who is a fantastic colleague but who cannot be with us. He would be delighted by the spirit of cooperation that now infuses these proceedings. With that, Mr President, I invite you to invite Professor Klein to the bar, and thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Sands, for your statement. I now give the floor to Mr Klein to make his statement.

MR KLEIN (*Interpretation from French*)**:** Mr President, distinguished Judges, earlier this week you heard our opponents' oral arguments regarding those issues of jurisdiction and admissibility which Mauritius' claim to the delimitation of the continental shelf beyond 200 Miles allegedly raises.

You might be tempted to think, on that basis, that the Republic of Mauritius is a State whose ability to cause trouble is inversely proportional to its diminutive size, which, were one to put any faith in the other side, would be an agent of chaos, ready to overturn the balance carefully struck by the States Parties to UNCLOS, threatening the integrity of the dispute settlement system put in place by that Convention and sowing the seeds of uncertainty. As I would like to show you today, nothing justifies this particularly alarmist vision of the consequences of a decision by which the Special Chamber would accept to rule on this element of Mauritius' claims.

I shall do this, unsurprisingly, by looking first at the question of the Special Chamber's jurisdiction; then that of the admissibility of the claim – fielding for each of these questions the main arguments that were advanced by our opponents the day before yesterday.

Faithful to the approach set out in their written pleadings, the Maldives continued to claim that the issue of delimitation of the continental shelves between the Parties beyond 200 nautical miles constituted a dispute separate from that opposing them regarding delimitation of maritime areas within this 200 nautical mile limit. This question, allegedly, was not the subject of an actual dispute between the Parties before the filing of the instant case, and its inclusion in the claims of Mauritius took the Maldives by surprise, depriving them of any opportunity to attempt to resolve this question before judicial dispute settlement proceedings commenced.[1]

Let us dwell a little, firstly, on this question of identifying the dispute between the Parties. Mr President, distinguished Judges, what is obvious at this stage of the debate is that the Parties are proposing to you two very different approaches to this issue. According to the Maldives, there had to have existed a specific and clearly identifiable dispute between the Parties regarding the delimitation of the continental shelves beyond 200 nm. According to Mauritius, on the contrary, it suffices for the Special Chamber to able to concede that this question, that of the delimitation of the extended continental shelves – the outer continental shelves, the OCS – was indeed one of the elements of the overall delimitation dispute between the Parties. I showed

[1] ITLOS/PV.22/C28/4, p. 32, lines 25-31 (Hart).

you at the beginning of this week that that was indeed the case since both States, and I repeat, both States, found in 2011 the existence of an overlap of the OCSs in the Chagos region.[2] That was an overlap which, as I clearly explained, clearly testifies to the existence of competing claims over the same area – competing claims which were, quite evidently, well known to the two Parties, since at the time they had demonstrated their willingness to find a solution. So there is no surprise there, is there?

On Thursday, Ms Hart tried to play down the importance of the joint communiqué of 2011. It was allegedly a lone, isolated document which was more a reflection of the Parties' willingness to cooperate than the existence of a dispute[3] – but *arguendo* that this is accurate – *quod non* in the opinion of Mauritius – then the key question becomes that of ascertaining whether this problem of overlap that the Parties agreed to recognize was subsequently resolved. Were both States in a position to present a joint submission on an OCS to the Commission on the Limits of the Continental Shelf, as Ambassador Koonjul suggested as early as 2010? Well, clearly not. Did the two States conclude those bilateral arrangements foreseen in the joint communiqué in 2011? Clearly not. In the years that followed did the two States settle, then, the question in another fashion? The answer there is, once again: no. Why? Because Maldives refused to pursue the dialogue which was started in 2010. This problem of the overlap of the OCSs has – still manifestly – not disappeared by magic in the meantime simply because Maldives chose to disregard it, just as it had disregarded the continued existence of the delimitation dispute as a whole.

How on earth, under these circumstances, could one still be surprised that this problem, which manifestly was not resolved in bilateral relations between the Parties, has finally been submitted to the Special Chamber as an integral part of the overall delimitation dispute? How can one claim, as the other side has done earlier this week, that it was a dispute created *de novo* which did not already exist?[4] That is obviously not the case. What was transferred to the Special Chamber is an overall delimitation dispute, including an element caused by the overlap of the OCSs of the Parties – a problem the Parties have been unable to resolve in the meantime.

The day before yesterday our opponents also tried to support their challenge to the Special Chamber's jurisdiction to deal with the delimitation of the continental shelves beyond 200 nautical miles by referring to how the existence of a similar dispute on this point between parties was established by the arbitral tribunal in the case of *Barbados* v. *Trinidad and Tobago*.[5] In the award handed down in 2006 in that case, the arbitrators noted that the record of negotiations showed that this problem was indeed on the table and had been the subject of a number of discussions between the parties, which was proof that this question of delimitation beyond 200 Miles indeed fell within the scope of the tribunal's jurisdiction.[6]

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[2] Joint Communiqué of 12 March 2011, Written Observations of Mauritius, Annex 14.
[3] ITLOS/PV.22/C28/4, p. 24, lines 1-2 (Hart).
[4] ITLOS/PV.22C28/4, p. 26, lines 35-37, p. 27, lines 1-4 (Hart), referring to *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 855, para. 54.
[5] ITLOS/PV.22C28/4, p. 27, lines 29-39, p. 28, lines 1-32 (Hart), referring to *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006.
[6] ITLOS/PV.22C28/4, p. 27, lines 13-45, p. 28, lines 1-15 (Hart), referring to *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006, para. 213.

According to our opponents, that situation was in clear contrast with the instant case, where such an opposition of views between the Parties on the specific question would not clearly appear in the case file of negotiations.[7] But what also does not emerge from Ms Hart's oral pleading is the fact that the arbitral tribunal had before it a negotiations record which is radically different from the one we have. Trinidad and Tobago and Barbados had been in an extremely sustained process of negotiations. Between 2000 and 2003 alone, representatives of the two States met at least nine times to discuss their maritime boundary and other related questions.[8] The negotiating teams were supported by technical experts. They had detailed exchanges on the exact scope of their national legislations and their respective claims. They compared their respective proposals regarding basepoint identification and the course of the delimitation on charts specially prepared to that end.[9]

The contrast with our situation in the instant case could hardly be more marked. As you know, Mr President, distinguished Judges, the question of delimitation of the maritime boundary between Mauritius and Maldives was briefly touched upon in 2001 before falling back into silence for almost 10 years, subsequent to Maldives' flat refusal to Mauritius' first request. That eventually led to some exchanges and was the subject of a meeting between delegations of the two States in October 2010 – one single, solitary meeting in the course of which discussions between the representatives of the two Parties obviously remained very general. How could it have been otherwise? The meeting did not even last two hours.[10]

As to the record noting exchanges between the Parties – well, all in all, it is about 15 pages long; so we are a long way from the abundance of exchanges and materials which were able to be put to the arbitral aribunal in the maritime delimitation case between Trinidad and Tobago and Barbados. Given this context, Mauritius is manifestly justified in relying on documents, which are far less numerous and considerably more summary, to assert that the question of overlap of continental shelves was indeed on the negotiating table between the Parties in the instant case, however brief those negotiations had been.

Mauritius' parallel with the reasoning of the arbitral tribunal in its award of 2006 is thus fully valid, all the more so given that over and above the question of the OCSs being a subject for negotiation, the main argument which clearly justified the decision of the arbitrators to include the delimitation of these areas within the tribunal's jurisdiction was that the continental shelf should be seen as a whole. This element surfaces very clearly indeed from the formulation of the last sentence of paragraph 213 of the award. You can see it on the screen.

(Continued in English)

> 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

[7] ITLOS/PV.22C28/4, p. 32, lines 13-17 (Hart).
[8] *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006, para. 194.
[9] See, *inter alia*, Counter-Memorial of Trinidad and Tobago, paras. 61-69.
[10] 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, Written Observations of Mauritius, Annex 13.

1 sufficiently closely related to, the dispute submitted by Barbados, (ii) the
2 record of the negotiations shows that it was part of the subject-matter on
3 the table during those negotiations, and (iii) in any event there is in law only
4 a single "continental shelf" rather than an inner continental shelf and a
5 separate extended or outer continental shelf.
6
7 *(Resumed in French)* Mr President, distinguished Judges, nothing has changed on
8 this point. In 2022, just as in 2006, there is still only one single continental shelf
9 rather than an internal continental shelf and an OCS or external continental shelf
10 which could be considered separate from the former. It is this consideration alone
11 that could in any event justify the Special Chamber being able to proceed with the
12 delimitation of the extended continental shelves in the instant case.
13
14 Apart from those more factual elements linked to the contents of the case record that
15 I have just dealt with, our opponents also spent a long time on Thursday to show to
16 what extent, in their view, a decision of the Special Chamber to include within its
17 jurisdictional scope the question of delimitation of the extended continental shelves
18 would call into question the well-established principles of international litigation.
19
20 Ms Hart recalled in this regard how important it was for States to have a precise idea
21 of the claims against them before being dragged into lengthy and costly international
22 judicial litigation.[11] To rehearse her terms, the Maldives had been "deprived of any
23 opportunity to react to the claim or to engage in negotiations or an exchange of
24 views as to methods of dispute settlement."[12]
25
26 This argument is quite curious. The insistence with which our opponents developed
27 the argument is pretty surprising given the very attitude ofthe Maldives in the instant
28 case. As Ms Hart herself recalled, the ultimate reason behind this requirement to
29 identify a dispute upfront was set out by the ICJ in its judgment of 2016, which I have
30 already mentioned: it is to ensure that the respondent State "has the opportunity to
31 react before the institution of proceedings to the claim made against its own
32 conduct."[13]
33
34 In our case, was the Maldives deprived of the opportunity to react to the claim made
35 against its conduct? The answer, Mr President, distinguished Judges, is "no" and
36 "no". No, because they had this opportunity to react since the problem arising from
37 the overlap of the continental shelves was on the negotiating table by the two States
38 back in March 2011; and"no" because they had the opportunity once again to react
39 in 2019 when the Republic of Mauritius invited it to start a second round of
40 negotiations on the question of delimitation of the maritime areas. Did the Maldives
41 seize this opportunity? Well, once again here, the answer is "no" and "no": not in
42 2011, nor in the following years up to 2019 did the Maldives show any real interest in
43 it, given that it continued to support the United Kingdom.
44

[11] ITLOS/PV.22/C28/4, pp. 27-29 (Hart).
[12] ITLOS/PV.22A28/4, p. 30, lines 23-25 (Hart).
[13] *Obligations concerning negotiations relating to Cessation of the Nuclear Arms Race and to nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 851, para. 43

1 So here we are in the presence of a State that has systematically refused all serious
2 attempts to resolve the maritime delimitation dispute with its neighbour in all aspects,
3 for about 10 years; and now it complains that the Special Chamber's exercise of its
4 jurisdiction to delimit the continental shelves beyond 200 Miles would deprive it of
5 the right to a negotiated settlement, a right which it never seized when the occasion
6 presented itself. This is, I am sure you will agree, a paradox and a half, which makes
7 the Maldives' appeals for compliance with the fundamental principles of international
8 litigation ring singularly false.
9
10 Our opponents' attempts to confront Mauritius with its alleged contradictions as to
11 the determination of the scope of the dispute are no more convincing. Ms Hart
12 presented to you two charts the day before yesterday, which are meant to illustrate
13 Mauritius' alleged inconsistency on this matter.[14] The first of these charts, which you
14 can see now onscreen, represented, according to Maldives, the idea that Mauritius
15 had of the dispute at the preliminary objections stage. No extended continental shelf
16 on the Mauritian side to be seen here. Alright. You will note there is no continental
17 shelf on the side of the Maldives to be seen either. Does this mean that Mauritius
18 considered that there was then no claim on either side to an extended continental
19 shelf, and so no dispute on this point? Certainly not. All that this chart shows is the
20 overlap area of the two States' claims based on their respective national legislations,
21 and then only up to 200 nm. This is very clearly set out in the written observations of
22 the Republic of Mauritius where the chart was taken from:
23
24 *(Continued in English)*
25 The extent of the disputed area within 200 M from the baselines from which
26 the breadth of the territorial sea is measured is shown in Figure 4
27
28 *(resumed in French)* – the disputed area within 200 Miles.[15]
29
30 So it is very difficult to see on what basis our opponents attempted this week to infer
31 from this a more general argument as to alleged variations of Mauritius' position
32 regarding the identification of the dispute submitted to the Special Chamber.
33
34 On Thursday, Ms Hart emphatically asked you: who could have guessed two years
35 ago that the Special Chamber would be called upon to delimit the continental
36 shelves beyond 200 nm?[16] I would be tempted to answer quite simply: just about
37 anyone, provided of course that this person had made the effort to read the
38 notification whereby the Republic of Mauritius initially set in train the settlement
39 procedure which led to the instant case.
40
41 I obviously have no doubt, Mr President, distinguished Judges, that you were of the
42 same position as and when the Special Chamber was set up not two years ago but
43 three years ago now. So there is no surprise here either, be it for the Special
44 Chamber or for Maldives. There is no unfair process whereby Mauritius allegedly
45 insidiously extended the scope of the dispute once the Special Chamber had been
46 seized. This question was part and parcel, since 2011 at least, of the overall dispute
47 between the Parties, and the Chamber has full jurisdiction to rule on this element of

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[14] ITLOS/PV.22C28/4, p. 32, lines 7-11 (Hart).
[15] Written Observations of Mauritius, p. 33, para. 3.44.
[16] ITLOS/PV.22/C28/4, p. 21, lines 25-27 (Hart).

1 Mauritius' claims. Unlike what our opponents are attempting to persuade you of, the
2 integrity of the dispute settlement system instituted by the Convention and the
3 legitimate expectations of States Parties will in no way be affected.
4
5 Let me just add a very last point to this debate. Reminding the other side and the
6 Special Chamber that, in the impossible likelihood that the Chamber would decline to
7 exercise its jurisdiction with respect to this part of the dispute, nothing of course
8 would prevent the Republic of Mauritius from filing a new case on the basis of Part V
9 of the Convention – a case that would then relate exclusively to delimitation beyond
10 200 nm. *Arguendo* – *quod non* – that the existence of a dispute on this point in the
11 instant case were not confirmed, then its reality would be established beyond all
12 possible doubt in the context of a new case. It would merely remain to be seen
13 whether such an approach would be desirable and above all compatible with the
14 principle of procedural economy enshrined in the ICJ's judgment of 2008 in the
15 *Application of the Convention for the Prevention and Punishment of the Crime of*
16 *Genocide*.[17] As the Court set out then, this principle, and I quote, is "an element of
17 the sound administration of justice" when it seeks to "prevent the needless
18 proliferation of proceedings."[18]
19
20 The same surely goes for ITLOS as for the ICJ.
21
22 Once again, this possibility of filing a new case is nothing more than conjecture
23 because in the opinion of the Republic of Mauritius there is no reason for the Special
24 Chamber not to exercise its jurisdiction over the entirety of the dispute before it, just
25 as there is no impediment to the admissibility of this part of its claim, something
26 which I shall now revisit.
27
28 In his pleadings this week, Professor Mbengue presented to you a particularly
29 intransigent vision of the system established by UNCLOS and by the States Parties
30 concerning the communication to the CLCS of information and submissions on an
31 extended continental shelf.
32
33 According to him, States are totally straitjacketed by their initial communications,
34 which they are not allowed to modify or to extend. Thus Mauritius was bound,
35 according to our friend, to present all of its claims to an OCS in its preliminary
36 information of 2009.[19] Any addition, modification or *a fortiori* extension to other
37 maritime areas than those covered by the initial communication should consequently
38 be deemed inadmissible.
39
40 The central issue here is that of the interpretation of the rules of the Montego Bay
41 Convention and related instruments concerning the method for States Parties to
42 submit their claims to extended continental shelves. What is to be noted in this
43 regard is the flexibility that both the States Parties and the CLCS have shown. This
44 flexibility is shown in a number of different ways. As of 2005 the legal counsel for the
45 United Nations issued an opinion according to which it is allowed for a State which
46 has submitted a claim to the CLCS under article 76 of the Convention to provide to

[17] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J Reports 2008*, p. 412.
[18] *Ibid.,* p. 443, para. 89.
[19] ITLOS/PV.22/C28/4, pp. 39-41 (Mbengue).

1 the Commission – while the claim is being examined – additional information or
2 documents that concern the limits of its continental shelf even if such data, such
3 information, diverges significantly from the limits originally presented by that State.[20]
4 This legal opinion is clearly fully in line with the way in which the CLCS itself sees its
5 role. It is not acting as a judge, there to sanction States for possible shortcomings in
6 their submissions for an extended continental shelf; it is there rather as a partner for
7 these States, concerned above all with providing them with assistance.
8
9 In a similar vein, there is clearly no need to recall that the States Parties themselves
10 decided to modify the time limit initially laid down in article 4 of Annex II to the
11 Convention for the submission of a claim to an extended continental shelf[21] and to
12 acknowledge that that timeline could be respected by the submission of preliminary
13 information on the outer limits of the continental shelf beyond 200 nautical miles.[22]
14 We should also make reference here to Annex I to the Rules of Procedure of the
15 CLCS concerning "Submissions in case of a dispute between States with opposite or
16 adjacent coasts or in other cases of unresolved land or maritime disputes".[23] Article
17 3 of that same text provides:
18
19 (*Continued in English*)
20 A submission may be made by a coastal State for a portion of its continental
21 shelf in order not to prejudice questions relating to the delimitation of
22 boundaries between States in any other portion or portions of the
23 continental shelf for which a submission may be made later notwithstanding
24 the provisions regarding the ten-year period established by article 4 of
25 Annex II to the Convention.
26
27 (*Resumed in French*) There are a number of States that have relied on this provision
28 in order to make submissions, many years after their initial communication to the
29 CLCS, concerning an extended continental shelf in regions other than those
30 concerned by their initial communication. For instance, there is the case of
31 Micronesia, which in 2009 communicated to the CLCS preliminary information
32 concerning two areas of an extended continental shelf.[24] In 2022, some 13 years
33 later, the very same State made a submission concerning a continental shelf
34 beyond 200 nm concerning a totally different region. This submission contained the
35 following:
36

[20] Letter dated 25 August 2005 from the Legal Counsel, Under-Secretary-General of the United Nations for Legal Affairs, addressed to the Chairman of the Commission on the Limits of the Continental Shelf, CLCS/46, 7 September 2005, p. 13.
[21] Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea, SPLOS/72, 29 May 2001.
[22] Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a), SPLOS/183, 20 June 2008.
[23] Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40/Rev. 1, 17 April 2008.
[24] Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles for Eauripik Rise et Mussau Ridge Areas Submitted by the Federated States of Micronesia.

(*Continued in English*)

> In accordance with paragraph 3 of Annex I to the Rules of Procedure, this Submission represents a partial submission in respect of a portion only of the continental shelf beyond 200 M from the territorial sea baselines of the Federated States of Micronesia. This is without prejudice to any future submission with respect to other areas of the continental shelf beyond 200 M from the territorial sea baselines, either covering completely separate areas or areas that are in any way related to, or connected with, any existing or future extended continental shelf claim of the Federated States of Micronesia. [...] Furthermore, in accordance also with paragraph 3 of Annex I to the Rules of Procedure, submissions for other areas of extended continental shelf may be claimed by the Federated States of Micronesia in the future, either separately or jointly with other state or states.[25]

(*Resumed in French*) Similarly, in 2008 Indonesia submitted an initial claim concerning the region to the north-west of Sumatra. This initial claim stated that

(*Continued in English*)

> [i]n accordance with paragraph 3 of Annex I of the Rules of Procedure, submissions of the outer limits of the extended continental shelf of Indonesia in other areas will be made at a later stage.[26]

(*Resumed in French*) And that is precisely what Indonesia did in 2019 for the region to the north of Papua New Guinea[27] and in 2020 for the region to the south-east of Sumatera[28] and in 2022 for the region to the south of Java and to the south of Nusa Tenggara.[29] This latter communication continued also to preserve Indonesia's rights for the future by indicating

(Continued in English)

> [t]his partial submission shall not in any way exclude Indonesia's rights to inform the Commission on the establishment of the outer limit of Indonesia's continental shelf in other areas.[30]

(*Resumed in French*) Allow me if you will to take a final example, that of the Republic of Korea, which in 2009 communicated preliminary information concerning the East China Sea.[31] Korea made a partial submission in 2012 concerning that very same maritime area[32] but it too clarified on that occasion that

[25] Partial Submission by The Federated States of Micronesia to the Commission on the Limits of the Continental Shelf concerning the Area North of Yap, summary.
[26] Partial Submission by Indonesia in respect of the area of North West of Sumatra, summary, para. 2.
[27] Partial Submission by Indonesia with respect to the Area of North of Papua, summary.
[28] Partial Submission by Indonesia in respect of the Area of Southwest of Sumatera, summary.
[29] Partial Submission by Indonesia in respect of the Area of South of Java and South of Nusa Tenggara, summary.
[30] *Ibid.*, p. 2.
[31] Peliminary Information regarding the Outer Limits of the Continental Shelf submitted by the Republic of Korea.
[32] Partial Submission by the Republic of Korea to the Commission on the Limits of the Continental Shelf Pursuant to Article 76 Paragraph 8 of the United Nations Convetion on the Law of the Sea, summary.

(*Continued in English*)

> [p]ursuant to paragraph 3 of Annex I to the Rules, this Partial Submission concerns only a portion of the continental shelf beyond 200 M from the baselines of Korea in the East China Sea. It is made without prejudice to any future submission by Korea defining the outer limits of its continental shelf in other areas.

(*Resumed in French*) The amended preliminary information and the submission concerning an extended continental shelf in the northern Chagos Archipelago region presented by Mauritius in April 2022 is fully in line with this practice. If this submission in any way threatens the Convention as a rule-based order, as our opponents somewhat dramatically assert,[33] should one not draw from that that the same applies to the other aforementioned submissions? Are they not also challenging the uniformity, the predictability and the stability of the system that Professor Mbengue made so much of the day before yesterday?[34] Should we therefore not state that each and every one of these claims is inadmissible or is it not rather that such an attitude would call into question the predictability of the system for those States who, through such submissions, are exercising their right to claim an OCS?

Clearly, what this practice shows is a deliberate willingness to grant more flexibility to the States that are dealing with such unresolved land or maritime disputes. You will doubtless agree that we are far removed from the rigid straitjacket imagined in this matter by our opponents,and which I referred to earlier on.

This flexibility is not the sole prerogative of the States Parties. We also find it in the way in which international courts deal with the amendments and modifications made by States to communications transmitted to the CLCS, even when those modifications arrive mid-proceedings. The case of *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana* v. *Côte d'Ivoire)* gives us a particularly striking illustration of this. In this case, Côte d'Ivoire had amended its initial submission to the CLCS after Ghana's Memorial was filed and shortly before it filed its own Counter-Memorial.[35] Ghana claimed that this revised submission should be excluded from the proceedings under "normal principles of internationallitigation".[36]

If this strikes you as a familiar argument, Mr President, Members of the Special Chamber, that is perfectly normal. You heard this very same thing the day before yesterday in the mouths of our opponents, stating that the Special Chamber could not entertain Mauritius' claim to an OCS because this would be going against,to quote Maldives the principles governing every international legal proceeding.[37]

You were told that deciding in any other fashion would be tantamount to challenging settled jurisprudence of international courts and tribunals.[38] Settled jurisprudence? Really? In *Ghana* v. *Côte d'Ivoire* the Special Chamber, first of all, observed that

[33] ITLOS/PV.22A28/4, p. 36, lines 27-30 (Mbengue).
[34] ITLOS/PV.22A28/4, p. 43, lines 37-39 (Mbengue).
[35] ITLOS, *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, para. 515.
[36] *Ibid.*
[37] ITLOS/PV.22/C28/4, p. 36, lines 13-14 (Mbengue).
[38] ITLOS/PV.22C28/4, p. 36, line 8 (Mbengue).

> it is for each State to decide within the framework set out under article 76, paragraph 8, of the Convention, including the rules of the CLCS, when and how to file its submissions to the CLCS.[39]

Far from dismissing the revised submission by Côte d'Ivoire for the procedural reasons invoked by Ghana, the judges concluded that Côte d'Ivoire could rely on the revised submission in the proceedings before the Special Chamber. Once again, what prevails is not the straitjacket of the initial submission but the concern that a State be allowed to have its claim heard for a continental shelf beyond 200 nm.

Allow me to dwell on one final point. Our opponents are unfairly accusing Mauritius in stating that the different vicissitudes the Mauritian authorities faced after communication of the preliminary information in 2009 played no role whatsoever as regards the time limits for communication by Mauritius of its amended preliminary information and then its final submission concerning the region. The only argument invoked by Professor Mbengue is that the data on the basis of which the amended preliminary information and the final submission concerning the region of the Chagos Archipelago were prepared was publicly available and had been since the early 2000s.[40] According to him, the upshot of this should be that neither the pressure that the competent government services in Mauritius were subject to, nor the uncertainties surrounding the legal status of the Chagos Archipelago, could, in any way, explain that the communications at issue had not been filed with the CLCS until many years later.[41]

Mr President, distinguished Members of the Special Chamber, the submissions addressed by Mauritius to the CLCS in 2014 and 2015 show that nothing is less true. In June 2014, the permanent representative of Mauritius to the United Nations informed the Secretary of the CLCS that his State would not be able to present an OCS submission concerning the Chagos Archipelago region, which had been announced in 2012, the reason being that

(Continued in English)

> Mauritius is experiencing capacity constraints and is presently engaged in preparations for the examination in July 2014 by a CLCS Sub-Commission of its Submission concerning the Extended Continental Shelf in the Region of Rodrigues Island.[42]

(Resumed in French) In December of the same year, the very same ambassador announced a further delay, as

(Continued in English)

> our small technical team dealing with continental shelf issues has had to focus on providing detailed scientific and technical information relating to

[39] ITLOS, *Delimitation of the maritime boundary in the Atlantic Ocean),* Judgment, para. 516.
[40] ITLOS/PV.22C28/4, p. 37, lines 12-16 (Mbengue).
[41] ITLOS/PV.22C28/4, p. 37, lines 18-26 (Mbengue).
[42] Letter from the Permanent Mission of the Republic of Mauritius to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 19 June 2014.

another submission which is currently being considered by a Sub-Commission at the CLCS.[43]

(Resumed in French) In December 2015, Ambassador Koonjul informed the Secretary of the CLCS that the Government of the Republic of Mauritius was involved in consultations with the Government of the United Kingdom with a view to preparing a joint submission to the CLCS concerning the Chagos Archipelago region. As we now know, this procedure, initiated following the arbitral award in the case of the protected marine area of the Chagos, was indeed doomed to failure.

The Republic of Mauritius, as you can see, is not seeking a false pretext to justify its alleged inaction. *Inter alia*, the uncertainties that continued to weigh for many years on the legal status of the Chagos Archipelago played a decisive role as regards the time lapse between the submission of preliminary information concerning the region and the filing of amended preliminary information and then the submission itself.

It is, of course, not a coincidence that the claim for an extended continental shelf concerning the southern Chagos Archipelago region was filed with the CLCS in 2019, only several weeks after the ICJ's advisory opinion had confirmed that the archipelago was an integral part of Mauritian territory. Nor is it by chance that the communications concerning the northern region of that same area were transmitted shortly afterwards.

Clearly, the United Kingdom's continuing claim over the Chagos Archipelago in violation of well-established principles of international law weighed particularly heavily, for a long time, on both States parties to these proceedings. That is a fact which the Special Chamber cannot reasonably ignore.

In conclusion, Mr President, distinguished members of the Special Chamber, there is nothing unreasonable about Mauritius' position. Accepting its arguments concerning jurisdiction of the Special Chamber as regards the claims for delimitation beyond 200 nm and the admissibility thereof does not mean overturning the general equilibrium established by the States Parties to the Convention. The practice of these States clearly shows, on the contrary, their flexibility in seeking to preserve the rights of States Parties to their continental shelf, particularly for those States involved in unresolved land or maritime disputes.

I should like to thank you for your attention and I would ask you, Mr President, to be good enough to call upon my colleague, Andrew Loewenstein – doubtless after the break.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Klein, for your statement. At this stage, the Special Chamber will withdraw for a break of 30 minutes. We will continue the hearing at 5 o'clock.

(*Break*)

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[43] Letter from the Permanent Mission of the Republic of Mauritius addressed to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 15 December 2014.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to
2 Mr Loewenstein to make his statement. You have the floor, Sir.
3
4 **MR LOEWENSTEIN:** Mr President, Members of the Special Chamber, good
5 afternoon. I will respond to the arguments that have been made by Maldives
6 concerning the entitlement of Mauritius to an outer continental shelf and to the
7 delimitation of the area where the entitlement of Mauritius overlaps with the
8 entitlement of Maldives beyond 200 Miles. In so doing, I will focus on the key issues
9 that divide the parties.
10
11 I begin with Maldives' persistence in disputing – contrary to the evidence – that
12 Mauritius has an entitlement to a continental shelf beyond 200 miles. Maldives tries
13 to dissuade you from exercising your otherwise well-founded jurisdiction by arguing,
14 in effect, that determining whether Mauritius has an entitlement to an outer
15 continental shelf in accordance with article 76 is too scientifically and technically
16 challenging for this Special Chamber, and that the matter should therefore be
17 shunted to the CLCS, notwithstanding the fact that the CLCS is presently barred by
18 operation of its Rules of Procedure from considering the matter. This is not a
19 compelling reason to decline to exercise jurisdiction.
20
21 To begin with, Maldives overstates the complexity of the task at hand. To be sure,
22 there are some tasks which the CLCS may be called upon to perform under
23 article 76 that are, indeed, technically complicated, such as determining whether,
24 under article 76, paragraph 4(a)(i), at each of the outermost fixed points of a State's
25 OCS claim, the thickness of the sedimentary rocks is at least 1 per cent of the
26 shortest distance to the foot of the continental slope.
27
28 But the Special Chamber is not called upon to do this. Instead, as set out in the
29 partial submission of Mauritius to the CLCS, the outer limits of the Mauritian
30 continental shelf beyond 200 Miles are to be delineated in accordance with
31 article 76, paragraph 4(a)(ii). This simply requires the outer limits to be drawn by
32 straight lines from the foot of the continental slope not exceeding 60 nautical miles in
33 length, connecting fixed points, defined by coordinates of latitude and longitude.
34
35 And the Special Chamber's task is made even easier by virtue of the fact that both
36 Mauritius and Maldives maintain the same critical foot of slope point. There is thus
37 no dispute that, in accordance with article 76, paragraph 4(b), the foot of slope point
38 has been determined at the point of maximum change in the gradient at the base of
39 the continental slope. So, this is not a task that the Special Chamber needs to do,
40 either.
41
42 Further, as I noted in the first round, Maldives does not dispute that Mauritius
43 correctly identifies the outer limits of the continental margin, as calculated from the
44 critical foot of slope point, in accordance with article 76, paragraph 4(a)(ii). You can
45 see this in the images now appearing on your screens, which show that the outer
46 limits of the OCS claimed by Mauritius are in alignment with the outer limits of the
47 OCS claimed by Maldives.
48
49 So, really, the issue that divides the Parties in regard to entitlement to a continental
50 shelf beyond 200 Miles is narrow: in essence, it comes down to whether Mauritius

can establish that there is a natural prolongation of its landmass to the critical foot of slope point. Even on Maldives' case, if Mauritius can show the existence of such a natural prolongation, the claim for delimitation of the area of overlapping entitlements is admissible.

Here, I am happy to observe that yesterday's oral pleadings by Maldives narrowed the issues that the Special Chamber needs to resolve. Professor Akhavan helpfully described two types of data – single-beam and multi-beam echosounder data – both of which are collected by vessels. These, he said, "constitute measured data" and noted that they are accessible from "public domain databases such as the United States National Geophysical Database, or NGDC." Professor Akhavan contrasted these types of measured bathymetric data with less accurate satellite altimetry-derived data. Professor Akhavan then stated that "[a] crucial point is how the CLCS differentiates satellite altimetry-derived data from other methods of collecting data, such as single beam and multi-beam echosounder data."

In that connection, Professor Akhavan further stated that

> [i]n circumstances such as the present case, where the asserted path is not a straightforward prolongation of the landmass, paragraph 4.2.6 of the CLCS Guidelines provides that "satellite altimetry-derived data… will not be regarded as admissible for purposes of delineating the 2,500 m isobath"

which Professor Akhavan said also applies to the determination of natural prolongation.

The key point to be drawn from Professor Akhavan's presentation is that Maldives expressly accepts that measured bathymetric data, whether single-beam or multi-beam echosounder data, is both superior to satellite-derived data and sufficient in itself to satisfy the requirements of the CLCS Guidelines for purposes of resolving the narrow issue that divides the Parties, namely whether there is a natural prolongation from the Mauritian landmass to the critical foot of slope point.

Professor Akhavan told you that there are no such data, and that, for this reason, the OCS claim of Mauritius is so manifestly wanting that it is inadmissible. He told you, in what he called the most important part of his presentation, that the absence of such data was the most obvious and utterly fatal flaw in Mauritius' case.

And, in specific regard to the area of the Gardiner Seamounts, where, in Mauritius' submission, its natural prolongation traverses the Chagos Trough, Professor Akhavan emphasized what he characterized as the absence of lines representing the tracks where measured bathymetric data had been collected by vessels. In support of that contention, he showed you the slide now appearing on your screens that, he said, was a close-up of the specific area of the Gardiner Seamounts upon which Mauritius' entire theory rests, and he told you that we see that the data is completely non-existent. There is, he said, not a single ship track, whether single beam or multi-beam.

The problem, one among many in Professor Akhavan's presentation, is that the image he showed you does not depict the location where the natural prolongation of

1 Mauritius crosses the Chagos Trough. You can now see on your screens the actual
2 route, depicted by solid black lines on the left side of your screens, by which
3 Mauritius' natural prolongation traverses the trough and ultimately reaches the foot of
4 slope point. Now, let's add the circle that Professor Akhavan showed. Mauritius'
5 route is depicted by the dark pink lines that immediately skirt the circle.
6
7 As I said, this is one problem among many. Here is a bigger one. Professor
8 Akhavan's statement that there is not a single ship track, whether single beam or
9 multi-beam is mistaken. In fact, such data do exist; and not only that, but the data
10 are readily accessible from publicly available sources, including the website of the
11 National Center for Environmental Information, from which they obtained much of the
12 data that Professor Akhavan relied on yesterday.
13
14 Mr President, contrary to what Professor Akhavan told you, there is measured
15 bathymetric data for the entirety of the natural prolongation of Mauritius.
16
17 To reach the foot of slope point via the area around the Gardiner Seamounts,
18 Mauritius relies on eight single-beam bathymetric profiles, the details of which you
19 can see on your screens. These were obtained from the NCEI online database,
20 which is the same source used by Maldives in its presentation yesterday. These
21 surveys were carried out by a range of institutions from 1959 to 1995. The oldest,
22 VIT31B, is the same bathymetric profile used by Maldives in reaching its own foot of
23 slope point, which is located in the same place as Mauritius' foot of slope point.
24
25 Now depicted on your screens is the route Mauritius takes through the Gardiner
26 Seamounts, shown by the black lines, via survey ANTAC23, continuing along the
27 eight profiles that were shown on the table in the previous slide. The bathymetric
28 profile served from these single beam surveys is depicted below. This shows an
29 overall elevated region along the entirety of the route to the critical foot of slope
30 point.
31
32 At the point that the base of slope region is reached, shown in the white section of
33 the profile, Mauritius used the GEOCAP profile analysis known as "Analyze Profile"
34 to locate the FOS point at the point of maximum change of gradient. This is
35 described in section 3 of the Mauritius' partial CLCS submission. Maldives appears
36 to have used the same methodology because the Parties reach exactly the same
37 FOS point along survey VIT31B, which is circled in yellow on your screens.
38
39 Along the route, five more bathymetric profiles are available, all showing the elevated
40 region along which Mauritius' path to the FOS point traverses. You can see the first
41 three of these on your screens as black lines. These all depict an elevated region.
42 Again, all of this data is available on the NCEI website.
43
44 The final two bathymetric profiles further north, also depicted as black lines, again
45 show the overall elevated region, which represents the natural prolongation of
46 Mauritius.
47
48 Adopting the same approach based on single-beam bathymetric data, Mauritius is
49 also able to reach the same critical FOS point via the elevated saddle to the north of

1 the Chagos Archipelago as depicted on your screens as black lines, via three
2 bathymetric surveys, the last of which, VIT31B, is also relied upon by Maldives.
3
4 The bathymetric profile shows the elevated saddle, straddling the Chagos Trough
5 region, before reaching the base of slope region. Again, the GEOCAP profile
6 analysis utility "Analyze Profile" was used to identify the same critical FOS point
7 relied upon by Maldives.
8
9 The natural prolongation of Mauritius extends additionally through the route
10 described in the Memorial. Maldives does not dispute that, as a matter of
11 geomorphology, this route is a morphological continuity that reaches the foot of slope
12 point. The only objection Maldives has raised concerns the fact that the natural
13 prolongation crosses within 200 miles of its baselines. So, its objection is legal in
14 nature, not technical. Maldives cites no authorities that support its contention that
15 Mauritius cannot establish its natural prolongation in this manner. And, we are aware
16 of none.
17
18 In light of the existence and accessibility of the measured bathymetric data we have
19 just reviewed, we were surprised when Maldives showed you yesterday the slide
20 now appearing on your screens. This purported to show breaks in morphological
21 continuity. The slide does not contain any indication of its source beyond that it was,
22 quote, "Produced for hearing by GeoLimits Consulting". But, even more damning, as
23 far as Mauritius has been able to ascertain, the figure is based on satellite-derived
24 bathymetry, that is, the same type of data that Professor Akhavan told you is the
25 least accurate of the various forms of bathymetric data and, in fact, so inaccurate
26 that the CLCS Guidelines do not permit its use for determining the natural
27 prolongation of a land mass in the circumstances present here.
28
29 In other words, the figure presents data that, by Maldives own reckoning, is of
30 significantly inferior quality to the bathymetric data we just reviewed, which
31 demonstrates beyond question that there is morphological continuity running from
32 Mauritius' landmass all the way to the foot of slope point. Under the applicable CLCS
33 Guidelines, this means that Mauritius has an entitlement to the continental shelf
34 beyond 200 Miles that it has claimed.
35
36 The upshot is that there is no significant uncertainty as to whether Mauritius has an
37 entitlement to an outer continental shelf. The evidence, in the form of measured
38 bathymetric data, satisfies the standard that Maldives itself accepts is sufficient to
39 establish the existence of an entitlement through natural prolongation. And, if the
40 Special Chamber has even a shadow of a doubt about this, it can readily be verified
41 by the Chamber, including though the assistance of an expert or experts, should the
42 Chamber consider the appointment to be useful in contributing to a judgment of
43 unimpeachable scientific and technical rigour.
44
45 Will, as Maldives argues, exercising jurisdiction prejudice the task of the CLCS in
46 delineating the outer limit of the continental shelf? No, it will not. As we have seen,
47 the Parties agree as to the location of the continental shelf's outer limits in this area.
48 They follow the same course in the submissions of both Mauritius and Maldives to
49 the CLCS. That is because the Parties use the same critical foot of slope point and it
50 is simply a matter of applying the method of delineation set out in article 76(4)(a)(ii)

1 by reference to fixed points not more than 60 Miles from the foot of the continental
2 slope. Both parties have done this, and concur as to the location of the resulting
3 outer limits. Accordingly, there can be no question of prejudicing the CLCS in regard
4 to its mandate of making recommendations in relation to delineation.
5
6 In any event, under the status quo, the CLCS is precluded from delineating the outer
7 limits of the Parties' respective OCS claims. Here, I pause to respond to Maldives'
8 curious contention that it has not objected to the Commission's consideration of
9 Mauritius' submission. Maldives seems to rest on the "hyper-formalistic" view that its
10 diplomatic note of 13 June 2022 to the UN Secretary General somehow does not
11 qualify as an objection because it does not use the word "objection". But let's
12 examine that contention having regard to the text of section 5(a) of Annex I to the
13 Rules of Procedure of the CLCS.
14
15 The provision provides: "In cases where a land or maritime dispute exists, the
16 Commission shall not consider and qualify a submission made by any of the States
17 concerned in the dispute." Thus, under its clear terms, the Commission is under an
18 obligation not to consider a submission in circumstances where there is a land or
19 maritime dispute. The phrase "shall not consider" admits no other interpretation.
20 Section 5(a) provides only one exception: where prior consent is given by all States
21 that are parties to the dispute.
22
23 Let's turn now to Maldives' diplomatic note of 13 June 2022. As you can see on your
24 screens, Maldives informs the Secretary-General that "[i]n June 2019, Mauritius
25 commenced proceedings against the Maldives with respect to the delimitation of the
26 maritime boundary between the Maldives and the Chagos Archipelago" and that the
27 dispute – that is the word used in the diplomatic note – was referred by agreement of
28 the Parties to the Special Chamber. Maldives goes on to inform the Secretary-
29 General that Mauritius has claimed "a continental shelf beyond 200 nautical miles
30 from the baselines from which its territorial sea is measured that overlaps extensively
31 with the area claimed by the Maldives in its full submission to the CLCS of 26 June
32 2010."[1] In other words, there is a maritime dispute that relates to the subject matter
33 of the Parties' respective submissions to the CLCS. This, of course, triggers
34 article 5(a)'s mandatory preclusion of the Commission's consideration of those
35 submissions. Did Maldives' diplomatic note express its consent to their consideration
36 by the Commission? No.
37
38 Mr President, this brings me to delimitation; and I begin with Maldives' insistence that
39 it can maintain a claim to an outer continental shelf that encroaches within 200 Miles
40 of the baselines of Mauritius. Now, notwithstanding Maldives' attempt in this litigation
41 to portray itself as seeking to uphold the right of a coastal State to make such a
42 claim, Maldives should not be confused with Nicaragua in its dispute with Colombia.
43 The fact that Maldives is making an OCS claim that encroaches within 200 Miles of
44 Mauritius is, in essence, an accident, and an accident that Maldives promised – but
45 failed – to correct.
46

[1] Note Verbale dated 13 June 2022 from the Permanent Mission of the Republic of Maldives to the United Nations in New York to the United Nations Secretary-General, available at https://www.un.org/depts/los/clcs_new/submissions_files/mus2_2022/PICLCSMauritius.pdf.

In its oral pleadings, Maldives did not deny that the 2010 OCS submission was prepared so as to respect the 200-Mile limit from the baselines of the Chagos Archipelago. Nor did Maldives make more than a half-hearted attempt to deny that Maldives committed itself – via an undertaking made by its Minister of Foreign Affairs and recorded in jointly signed minutes – to rectify its failure to use the EEZ coordinates of Mauritius through an addendum to Maldives' submission to the CLCS. The precise phrase is that the Mauritius side was "assured" that this "would be rectified".[2]

Ms Sander was unable to explain how this could mean anything other than that Maldives had committed itself to fix or correct its failure to use Mauritius' baselines in the 2010 submission when determining the outer limits of its OCS claim. The consequence of Maldives' further failure to fulfil its undertaking is that its outer continental shelf claim encroaches slightly into the 200-Mile limit of Mauritius. The Special Chamber should not countenance this claim. Indeed, if Maldives were entitled to claim an outer continental shelf within 200 Miles of the baselines of Mauritius, so too could Mauritius, correspondingly, claim an outer continental shelf that encroaches within 200 Miles of Maldives. You can see on your screens how extensive such a claim by Mauritius would be, reaching far into Maldives' EEZ.

I turn now to the delimitation of the Parties' overlapping OCS entitlements. Although serious differences divide the Parties, there are three important areas of agreement.

First, Maldives agrees that the three-step method is not mandatory.[3]

Second, Maldives further agrees that, in those circumstances where the three-step method is to be applied by a court or tribunal, it must do so bearing in mind the importance of achieving an equitable solution in light of the particular circumstances of the case.[4]

Third, Maldives agrees as well that, while the three-step methodology ensures coherence and predictability, minimizing arbitrariness, it provides sufficient flexibility to accommodate the circumstances of individual cases and has an inbuilt fact-specific assessment. There may be an adjustment of a provisional equidistance line in light of the circumstances of the case and there is the further cross-check for gross disproportionality.[5]

Differences between the Parties remain, however. Most significantly, Maldives persists in refusing to acknowledge the inextricable link between, on the one hand, the basis of entitlement of the continent shelf within and beyond 200 Miles, and the means by which those maritime spaces are to be delimited, on the other, having regard to article 83's requirement of an equitable solution. We expected Maldives to address the ICJ's holding in *Libya* v. *Malta*, where the Court described the link

[2] 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) (Written Observations of the Republic of Mauritius on the Preliminary Objections raised by the Republic of Maldives, Annex 13).
[3] ITLOS/PV.22/C28/5, p. 19 (line 37).
[4] ITLOS/PV.22/C28/5, p. 19 (lines 38-39).
[5] ITLOS/PV.22/C28/5, p. 20 (lines 16-23).

between the method of delimitation and the basis for entitlement as being, to use the Court's words, "self-evident" and "logical".[6] But, what did we hear in response? Absolutely nothing.

It is not as though the holding has lost its force. Under article 76, entitlement to a continental shelf within 200 Miles is still based exclusively on the distance criterion. Entitlement to the continental shelf beyond 200 Miles is still based exclusively on geology and geomorphology. And, the delimitation of the continental shelf within and beyond 200 Miles must still give effect to these different sources of title.

During its first-round presentation, Maldives referred to the International Law Association's Committee on Legal Issues of the Outer Continental Shelf, under the chairmanship of the distinguished former President of this Tribunal, Dolliver Nelson. But, Maldives did not tell you what the ILA Committee had to say about this issue in the section of its 2002 report devoted to "Delimitation of the Outer Continental Shelf Between States".[7] It therefore falls to Mauritius to do so.

The Committee began by observing that while

> [t]he rule on the delimitation of the continental shelf between states with opposite or adjacent coast contained in article 83 of the LOS Convention does not make any explicit distinction between the delimitation of the continental shelf within the 200 nautical mile limit and beyond that distance

the "fact that the basis for entitlement to continental shelf and its delimitation are linked suggests that the process of delimitation may be different in these two cases." In other words, in the view of the ILA Committee, Maldives is wrong to argue that the fact that there is a single continental shelf means that the method for delimiting the continental shelf within 200 Miles should also be the delimitation method beyond 200 Miles.

The Committee then stated that "[e]ntitlement to the EEZ and a continental shelf extending up to the 200 nautical mile limit is based on distance from the coast." This fact, the Committee said, "makes the distance criterion" an "important consideration in the delimitation of these areas," that is, within 200 Miles. However, the Committee went on to state – again, in agreement with the position advanced by Mauritius and in disagreement with that of Maldives – that since "[d]istance does not play the same role in the establishment of entitlement over and the outer limit of the outer continental shelf," this "may have an impact on the rules applicable to the delimitation of this part of the continental shelf," that is, beyond 200 Miles.

Maldives ignores entirely this distinction, despite the emphasis placed on it by the ICJ and the ILA Committee. Maldives' approach to delimitation of the Parties' overlapping continental shelf entitlements therefore proceeds on the fundamentally erroneous premise that there is no linkage between the method of delimitation and the basis for entitlement. That is wrong, as both the Court and the ILA Committee have said.

[6] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, paras. 27, 61.
[7] Report of the ILA Committee on Legal Issues of the Outer Continental Shelf, New Delhi Conference (2002).

Maldives is not helped by arguing that the approach Mauritius takes to delimitation beyond 200 Miles by giving effect to the basis for entitlement to the outer continental shelf is somehow inconsistent with the principle that the land dominates the sea. It is not. Entitlement beyond 200 Miles requires the area of shelf in question to be physically connected to the landmass, as the concept of natural prolongation is understood. As I showed earlier, that requirement is satisfied here.

Nor does the case law support Maldives' mechanistic approach to the three-step method. Maldives derives no support from cases where international courts or tribunals have extended adjusted or unadjusted equidistance lines within 200 Miles to delimit the continental shelf beyond 200 Miles. In each of those cases, the court or tribunal carefully noted that extending the equidistance line was justified on the facts of the particular case. In *Bangladesh* v. *Myanmar*, the Tribunal explained that "the delimitation method to be employed in the present case for the continental shelf beyond 200nm should not differ from that within 200nm."[8]

Nor, in *Bangladesh* v. *India*, did the Annex VII tribunal automatically extend the delimitation within 200 Miles into the area beyond 200 Miles. Rather, in connection with the delimitation beyond 200 Miles, the tribunal explained that it "must examine the geographic situation as a whole."[9] Only after examining the geographic situation as a whole and making adjustments to ensure that the line could achieve an equitable result did the Tribunal extend the delimitation line within 200 Miles to delimit the relevant area beyond 200 Miles as well. Moreover, the Tribunal did not mechanically extend the provisional equidistance line. It took steps to "ameliorate [the] excessive negative consequences the provisional equidistance line would have."[10]

Likewise, in *Somalia* v. *Kenya*, the Court extended the delimitation line that it had drawn within 200 Miles 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 the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles to delimit the continental shelf beyond 200 nautical miles.[11]

The particular factual circumstances recorded in each of these judgments and awards as justifications for extending the delimitation line within 200 Miles to the area beyond do not pertain here. Each involved adjacent coastal States where – and this is the critical factor – the overlapping OCS entitlements were situated across a broad, continuous belt of shelf next to the adjacent States. Not so with respect to the location of the overlapping OCS entitlements here, where, due to geomorphological factors, the area subject to delimitation protrudes to the north.

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[8] *Bangladesh*/Myanmar, *Judgment, ITLOS Reports 2012*, p. 100, para. 455.
[9] *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award (7 July 2014), para. 410.
[10] *Ibid.*, para. 477.
[11] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment of 12 October 2021, para. 195 (emphasis added).

1
2 As the ICJ indicated in *Libya* v. *Malta*, it is illogical to delimit that area by means of a
3 methodology that gives primacy to coastal configuration and distance from the coast
4 when those factors are irrelevant to the coastal States' source of entitlement.[12]
5 Unlike within 200 Miles, there is no meaningful relationship with those factors. Thus,
6 delimiting the area by means of equidistance would be essentially arbitrary. It would
7 depend entirely on the happenstance of the location of the area of overlap.
8
9 In the particular circumstances of the present case, and as you can see on your
10 screens, the arbitrariness of the equidistance line in relation to the location of the
11 area of overlapping entitlements results in Mauritius being deprived of nearly 99 per
12 cent of its overlapping OCS entitlement, or even 100 per cent, if Maldives' flawed
13 version of the equidistance line is used, despite the fact that Mauritius has an equal
14 entitlement in law to the area as does Maldives. Maldives warned against
15 refashioning geography. But that is not the danger here. Instead, it is the
16 refashioning of geomorphology that would result in treating the entitlement as if it
17 does not exist.
18
19 Now, consider if the location of the overlapping entitlements were reversed, as you
20 can see on your screens, with the area protruding south rather than north. In those
21 circumstances, where the protruding area extends to the south rather than to the
22 north, blindly extending the equidistance would line lop off nearly all of Maldives'
23 entitlement, by virtue of applying a method of delimitation that gives effect only to
24 coastal configuration and distance when those factors are immaterial beyond
25 200 Miles.
26
27 Finally, consider the circumstance now on your screens, where there is a belt of
28 overlapping entitlements located in front of the endpoint of the delimitation within 200
29 Miles. In these circumstances, which broadly resemble those present in the handful
30 of cases where a court or tribunal has been invited to delimit beyond 200 Miles, the
31 delimitation line within 200 Miles could be extended, consistent with equity. Not so
32 here, where, due to the location of the overlapping entitlements, doing so would
33 deprive Mauritius almost entirely of its entitlement.
34
35 This is, on any reasonable view, an enormous cut-off effect – or at least one would
36 have thought. Maldives, however, argues otherwise. Yesterday, they contended, to
37 use Ms Sander's words, "this is not a 'cut off'".[13] Mr President, if extending the
38 equidistance line deprives Mauritius of all, or nearly all, of its outer continental shelf
39 entitlement, is not a cut-off effect, I am afraid the Special Chamber may need to
40 invent a new term to cover this situation.
41
42 Regardless, it is patently inequitable and requires a remedy. As the ICJ held in the
43 *Black Sea* case and repeated in *Nicaragua* v. *Colombia*, the delimitation line must
44 allow the parties "to produce their effects in terms of maritime entitlements in a

[12] See *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, para. 39.
[13] ITLOS/PV.22C.28/5, p. 24 (lines 23-24).

reasonable and mutually balanced way."[14] The extended equidistance line plainly falls far short of that standard.

Fortunately, the flexibility inherent in a Part XV court or tribunal's approach to maritime delimitation provides this Special Chamber with the means for crafting an appropriate solution. Even if the Special Chamber were to extend the equidistance line at the first stage, the Special Chamber would inevitably have to make a radical adjustment in order to achieve the equitable result mandated by article 83. As the case law demonstrates, adjustments can be radical indeed. For example, as you can see on your screens, in *Nicaragua* v. *Colombia*, while the ICJ began with a provisional equidistance line, due to the inequitable results at the equidistance line, the adjusted line bears no resemblance to the line drawn at that initial stage.[15] The final delimitation line involved three different delimitation methods: enclaving and semi-enclaving of islands; equi-ratios; and using parallels to create a corridor – all of which were designed to address the inequitable cut-off effect.

Resorting to the three-step method here would inevitably have to result in an adjustment of even greater magnitude. As the Court explained, the delimitation must allow the coastal States' maritime entitlements to produce their effects in a reasonable and mutually balanced way.[16] In the particular circumstances of this case, where the Parties have overlapping entitlements that are equal in law and coastal configuration is irrelevant, it is hard to see how the twin loadstars of reasonableness and mutual balance could result in anything other than an equal apportionment.

Mr President, Members of the Special Chamber, this concludes my presentation. May I take this opportunity to express my deep appreciation to all of my colleagues on the Mauritian team, including Mr Reichler, who was unable to be here today. Thank you for your kind attention. I ask that you invite the Co-Agent of Mauritius to the podium.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Loewenstein, for your statement. I understand the Co-Agent of Mauritius, Mr Koonjul, will make some closing remarks and present the final submissions for Mauritius.

In this regard, I wish to recall that article 75, paragraph 2, of the Rules of the Tribunal provides that, at the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read their party's final submissions. A copy of the written text of these submissions, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

I now invite the Co-Agent of Mauritius, Mr Koonjul, to take the floor to make a closing statement and present the final submissions of Mauritius.

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[14] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, para. 215; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 201.
[15] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 624.
[16] *Ibid.*, para. 215.

1 **MR KOONJUL:** Mr President, honourable Members of the Special Chamber,
2 honourable Agent and members of the delegation of the Republic of Maldives, in my
3 capacity as Co-Agent of the Republic of Mauritius, it falls to me to bring to a close
4 the oral pleadings of the Republic of Mauritius and to recite its final submissions.
5
6 As you have heard from Professor Sands, Professor Klein and Mr Loewenstein, the
7 matters that remain in dispute between the Parties are relatively narrow in scope, but
8 certainly not without significance.
9
10 First, within 200 nautical miles, Professor Sands has shown that Maldives has failed
11 to substantiate any supposed hard-line rule that low-tide elevations can never be
12 used for the placement of basepoints. There is no support for this proposition in the
13 Convention, nor in the case law. Likewise, Maldives' newfound discovery of
14 57 separate maritime features at Blenheim Reef is completely at odds with all the
15 relevant nautical charts; neither does it correspond with the observations made
16 during Mauritius' technical and scientific on-site survey, or with the treatment of such
17 features by international courts and tribunals, most notably in the *South China Sea*
18 arbitration in relation to which our friends from Maldives have remained
19 conspicuously silent.
20
21 Be that as it may, the path of least resistance in this case is Part IV of the
22 Convention, which provides the Special Chamber with a cleaner and far simpler way
23 to reach the right and obvious conclusion. Maldives' only real argument in response,
24 relating to article 47, paragraph 4, of the Convention is, as demonstrated by
25 Professor Sands, inescapably not applicable to drying reefs, which includes
26 Blenheim Reef. This is supported not only by the terms of article 47 itself but, also,
27 by the *travaux préparatoires*, authoritative academic commentary and the consistent
28 practice of archipelagic States, such as Fiji and Solomon Islands, as well as the
29 reactions of other States to such practice.
30
31 Second, on jurisdiction and admissibility in relation to Mauritius' claim beyond
32 200 nautical miles, Professor Klein has shown that Maldives has adopted an unduly
33 formalistic approach to the definition of the dispute between the Parties, as well as
34 the law and practice of the CLCS. There has been a long-standing dispute between
35 the Parties concerning their overlapping entitlements beyond 200 nautical miles prior
36 to Mauritius' notification. The steadfast refusal of Maldives to engage with Mauritius
37 – premised on its misplaced support for the United Kingdom's unlawful occupation of
38 the Chagos Archipelago – can in no way support Maldives' contention that there is
39 no dispute concerning overlapping entitlements beyond 200 nautical miles. That
40 dispute is now before the Special Chamber only because Maldives has, until very
41 recently, refused to engage with Mauritius in its capacity as the only State having
42 sovereignty over the Chagos Archipelago.
43
44 The Judgment of the Special Chamber on Preliminary Objections, described as
45 "felicitous by Counsel for Maldives,[1] has been most welcome in fostering a new spirit
46 of cooperation between the Parties. Professor Klein has also demonstrated, by
47 reference to the relevant rules of the CLCS and the practice of UNCLOS member
48 States, that Mauritius has made a timely and proper CLCS submission with regard to

[1] ITLOS/PV.22/C28/3, p.7, line 29 (Mr Akhavan).

1 the Northern Chagos Archipelago Region. The Special Chamber has jurisdiction to
2 determine Mauritius' claim beyond 200 nautical miles, and there is no reason for the
3 Special Chamber not to exercise such jurisdiction. To the contrary, the Special
4 Chamber would, in exercising the jurisdiction that it has, be fulfilling its mandate in
5 enhancing respect for the Convention and facilitating the resolution of disputes
6 pursuant to Part XV.
7
8 Third, Mr Loewenstein has shown that Mauritius has a natural prolongation,
9 extending from its landmass, through multiple routes to the critical foot of slope point
10 to the north of the Chagos Archipelago. Contrary to what was asserted yesterday,
11 there is publicly available measured bathymetric data – of the type that Maldives
12 accepts is sufficient to establish natural prolongation – which does indeed establish
13 that there is a natural prolongation of Mauritius' landmass to the critical foot of slope
14 point. Mr Loewenstein has also demonstrated that Maldives' proposed delimitation
15 beyond 200 nautical miles is unsupported and unsupportable, while Mauritius'
16 proposed delimitation is the equitable solution required by article 83 of the
17 Convention.
18
19 Mr President, on Thursday morning, counsel for Maldives submitted that if "there
20 were no questions of jurisdiction and admissibility", there would be "compelling
21 reasons to have a second phase to properly address scientific and technical
22 evidence" with regard to the Parties' claims beyond 200 nautical miles.[2]
23
24 Mr President, to the extent that Special Chamber may consider that another phase is
25 required, Mauritius would welcome such an approach. On the basis of the technical
26 and scientific evidence before the Special Chamber – in relation to the claims of both
27 Parties beyond 200 nautical miles – Mauritius considers that the Special Chamber is
28 highly likely to be assisted, to a significant degree, by the appointment of a suitably
29 qualified expert or experts. Such an appointment could only enhance the Special
30 Chamber's capacity to apply the necessary scientific and technical rigour to the
31 assessment of the Parties' respective entitlement to a natural prolongation beyond
32 200 nautical miles.
33
34 Mr President, as you have heard this week, both Mauritius and Maldives have
35 acknowledged that they share warm and long-standing relations. As small island
36 developing States, Mauritius and Maldives stand together in the face of the
37 existential threats to which the distinguished Deputy Attorney General of Maldives,
38 Ms Shaany, referred.[3] The mutual respect and cooperation between the Parties has
39 been clearly reflected in the way this phase of the proceedings has been conducted.
40 Over the last few days, we have also had the opportunity to engage with our friends
41 from Maldives constructively to consider the possibility of collaboration in several
42 areas of mutual interest, and we are looking forward to a new era of strengthened
43 cooperation. We deeply appreciate the role played by ITLOS and the Special
44 Chamber in enabling the Parties to reach this point.
45
46 At the same time, Mr President, we were somewhat surprised, on Wednesday
47 afternoon, to hear Ms Shaany say that there has been no "change of tone" on the

[2] ITLOS/PV.22/C28/3, p.19 (Mr Akhavan).
[3] ITLOS/PV.22/C28/4, p.14, lines 24-26 (Ms Shaany).

part of Maldives with regard to cooperation with Mauritius.[4] That is certainly not our understanding of the assurances given by the President of Maldives in his letter of 22 August 2022, which expressly recognizes Maldives' decision to "change its position".[5] In reply, the Prime Minister of Mauritius, in reliance on Maldives' assurances, has stated that past difficulties that arose prior to Mauritius' survey would be left to the past. And when we say left to the past, we really mean it.

To conclude, Mr President, on behalf of the Agent of Mauritius, my legal team, the Government and the people of Mauritius, I wish to express sincere thanks and appreciation to you, Mr President, and to the distinguished Members of this Special Chamber for your kind attention, astute engagement, and the manner in which you have conducted these proceedings. We are also grateful to ITLOS for its ongoing support to the Parties in resolving their dispute concerning delimitation of their common maritime boundary in the Indian Ocean. We also express our sincere gratitude to the Registrar, her outstanding staff, the interpreters, stenographers and all those who have played a part in facilitating this hearing.

Mr President, distinguished Members of the Special Chamber, that leaves me with the task, on behalf of the Agent of Mauritius, of reading out Mauritius' final submissions.

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

(a) the Special Chamber has jurisdiction to determine Mauritius' claim to a continental shelf beyond 200 nautical miles and the claim is admissible;

(b) the entire maritime boundary between Mauritius and Maldives in the Indian Ocean, within 200 nautical miles and in the outer continental shelf, connects the 53 points, using geodetic lines, the geographic coordinates for which (in WGS 1984 datum) are set out on pages 54 and 55 of the Reply of Mauritius.

Thank you, Mr President and Members of the Special Chamber, for your kind attention. This concludes the oral pleadings of Mauritius. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Koonjul. This completes the second round of oral arguments of Mauritius. The hearing will resume on Monday at 10 a.m. to hear the Maldives' second round of oral arguments. The sitting is now closed. Good evening.

(*The sitting closed at 6 p.m.*)

[4] ITLOS/PV.22/C28/4, p.12, lines 5-7 (Ms Shaany).
[5] Letter from the President of Maldives to the Prime Minister of Mauritius dated 22 August 2022 (Mauritius' Judges' folder, tab 1).