

# INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2022

Public sitting

held on Monday, 17 October 2022, at 10 a.m.,  
at the International Tribunal for the Law of the Sea, Hamburg,  
President of the Special Chamber, Judge Jin-Hyun Paik, presiding

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

(Mauritius/Maldives)

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**Verbatim Record**

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

<i>Present:</i>	President	Jin-Hyun Paik
	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
		Neeru Chadha
		Judges <i>ad hoc</i>
		Nicolaas Schrijver
	Registrar	Ximena Hinrichs Oyarce

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*Mauritius is represented by:*

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

*as Agent;*

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

*as Co-Agent;*

*and*

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

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

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

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

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

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

*as Counsel and Advocates;*

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

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

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

*as Counsel;*

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

*as Adviser;*

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

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

*as Technical Advisers;*

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

*as Assistant.*

*Maldives is represented by:*

Mr Ibrahim Riffath, Attorney General,

*as Agent;*

*and*

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

*as Representatives;*

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

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

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

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

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

*as Counsel and Advocates;*

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

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

*as Technical Advisers;*

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

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

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

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

*as Assistants.*

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good morning, everyone. I wish  
2 to welcome you all to this hearing. The Special Chamber of the International Tribunal  
3 for the Law of the Sea meets this morning to hear the Parties' arguments on the  
4 merits in the *Dispute concerning delimitation of the maritime boundary between*  
5 *Mauritius and Maldives in the Indian Ocean*. We meet today in the interim courtroom  
6 of the Tribunal and it is a pleasure to welcome you again to attend the hearing in  
7 person. I wish to kindly ask everyone to ensure that their mobile phone is turned off.  
8

9 It should be recalled that by Special Agreement concluded on 24 September 2019,  
10 the representatives of the Republic of Mauritius and the Republic of Maldives agreed  
11 to submit the dispute concerning delimitation of the maritime boundary between  
12 them in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant  
13 to article 15, paragraph 2, of the Statute of the Tribunal.  
14

15 The Tribunal was notified of the Special Agreement on 24 September 2019 and the  
16 Special Chamber was constituted by an Order of the Tribunal of 27 September 2019.  
17 The case was entered as No. 28 in the List of Cases.  
18

19 On 18 December 2019, the Maldives raised preliminary objections to the jurisdiction  
20 of the Special Chamber and to the admissibility of Mauritius' claims pursuant to  
21 article 97, paragraph 1, of the Rules of the Tribunal. On 28 January 2021, the  
22 Special Chamber delivered its judgment on the preliminary objections of the  
23 Maldives. In its judgment, the Special Chamber found that it had jurisdiction to  
24 adjudicate upon the dispute submitted to it by the Parties concerning the delimitation  
25 of the maritime boundary between them in the Indian Ocean and that the claim  
26 submitted by Mauritius in this regard was admissible.  
27

28 I now call on the Registrar to summarize the procedure relating to the merits of the  
29 case and to read out the submissions of the Parties.  
30

31 **REGISTRAR:** Thank you, Mr President.  
32

33 By order of 3 February 2021, the President of the Special Chamber fixed 25 May and  
34 25 November 2021 as the time limits for the filing, respectively, of the Memorial of  
35 Mauritius and the Counter-Memorial of the Maldives. The Memorial and the Counter-  
36 Memorial were filed within the prescribed time limits.  
37

38 By order of 15 December 2021, the President of the Special Chamber authorized the  
39 submission of a Reply by Mauritius and of a Rejoinder by the Maldives and fixed  
40 14 April 2022 and 15 August 2022, respectively, as the time limits for the filing of  
41 these two pleadings. The Reply and the Rejoinder were duly filed within the  
42 prescribed time limits.  
43

44 I will now read out the submissions of the Parties.

1 In its Reply, Mauritius makes the following submissions:  
2

3 Mauritius respectfully requests the Special Chamber to adjudge and  
4 declare that:  
5

6 (1) The maritime boundary between Mauritius and Maldives in the Indian  
7 Ocean connects the following points, using geodetic lines (the geographic  
8 coordinates are in WGS 1984 datum).  
9

10 (2) Maldives shall pay to Mauritius a reasonable sum, being not less than  
11 €460,000, to cover the reasonable additional costs incurred by Mauritius in  
12 the conduct of the scientific survey of Blenheim Reef and appurtenant  
13 waters and islands, as a consequence of the unreasonable refusal of  
14 Maldives to allow any part of its territory to be used in the conduct of the  
15 survey.  
16

17 A table with the list of the coordinates for each of the points is set out in the Reply of  
18 Mauritius at pages 54 and 55.  
19

20 The Maldives, in its Rejoinder, makes the following submissions:  
21

22 The Republic of Maldives requests the Special Chamber to adjudge and  
23 declare that:  
24

25 (a) Mauritius' claim to a continental shelf beyond 200 Miles from the  
26 baselines from which its territorial sea is measured should be dismissed on  
27 the basis that it is:  
28

- 29 (i) outside the jurisdiction of the Special Chamber; and/or
- 30 (ii) inadmissible.  
31

32 (b) The single maritime boundary between the Parties is a series of  
33 geodesic lines connecting the following points 1 to 46.  
34

35 (c) In respect of the Parties' Exclusive Economic Zones, the maritime  
36 boundary between them connects point 46 to the following point 47 *bis*  
37 following the 200 Miles limit measured from the baselines of the Maldives:  
38

39 (d) In respect of the Parties' continental shelves, the maritime boundary  
40 between the Parties continues to consist of a series of geodesic lines  
41 connecting the following points, until it reaches the edge of the Maldives'  
42 entitlement to a continental shelf beyond 200 Miles from the baselines from  
43 which the breadth of its territorial sea is measured (to be delineated  
44 following recommendations of the Commission on the Limits of the  
45 Continental Shelf at a later date):  
46

47 (e) Mauritius' request that the Maldives be ordered to pay to Mauritius  
48 certain costs incurred by Mauritius in the conduct of its survey of Blenheim  
49 Reef be dismissed.  
50

51 Tables with the list of the coordinates for each of the relevant points is set out in the  
52 Rejoinder of the Maldives at pages 69 and 70.  
53

1 By order dated 18 August 2022, the President of the Special Chamber fixed  
2 17 October 2022 – that is, today – as the date for the opening of the hearing.

3  
4 Pursuant to the Rules of the Tribunal, copies of the written pleadings are being made  
5 accessible to the public as of today. They will be placed on the Tribunal's website.  
6 The hearing will also be transmitted live on this website.

7  
8 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Madam Registrar.

9  
10 In accordance with the arrangements on the organization of the procedure decided  
11 by the Special Chamber, the hearing will comprise a first and second round of oral  
12 argument. The first round will begin today and will close on Friday, 21 October 2022  
13 following a morning sitting. The second round will take place during the afternoon of  
14 Saturday, 22 October 2022 and the morning of Monday, 24 October 2022.

15  
16 Today's sitting, in the course of which Mauritius will present the first part of the  
17 statement, will last until one o'clock and, as usual, there will be a 30-minute break  
18 between 11:30 and midday. After the lunch break the hearing will be resumed at  
19 3 p.m.

20  
21 I note the presence at the hearing of Agents, Co-Agents, representatives, counsel  
22 and advocates of Mauritius and the Maldives.

23  
24 I now call on the Agent of Mauritius, Mr Dheerendra Kumar Dabee, to introduce the  
25 delegation of Mauritius. You have the floor, Mr Dabee.

26  
27 **MR DABEE:** Mr President, distinguished Members of the Special Chamber, Madam  
28 Registrar. Good morning.

29  
30 It is my pleasure to introduce the members of the Mauritius delegation. My name is  
31 Dheerendra Kumar Dabee. I was Solicitor-General of Mauritius when the  
32 proceedings started and now I am the Legal Adviser/Consultant in the Attorney  
33 General's Office, and have remained as Agent of Mauritius.

34  
35 The Co-Agent for Mauritius is His Excellency Mr Jagdish Dharamchand Koonjul,  
36 Ambassador and Permanent Representative of the Republic of Mauritius to the  
37 United Nations.

38  
39 The members of the delegation are as follows: as Counsel and Advocates,  
40 Mr Philippe Sands King's Counsel, Professor of International Law at University  
41 College London, Barrister at 11 King's Bench Walk, London, UK; Mr Pierre Klein,  
42 Professor of International Law at the Université Libre de Bruxelles, Belgium;  
43 Mr Andrew Loewenstein, Attorney-at-Law, Foley Hoag USA; Mr Yuri Parkhomenko,  
44 Attorney-at-Law, Foley Hoag, Boston, USA; Mr Remi Reichhold, Barrister at  
45 11 King's Bench Walk, London, UK; Dr Mohammed Rezah Badal, Director-General,  
46 Department for Continental Shelf, Maritime Zones Administration and Exploration,  
47 Prime Minister's Office, Mauritius.

1 As Counsel we have Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India;  
2 Ms Diem Huong Ho, Attorney-at-Law, Foley Hoag USA; Ms Sun Young Hwang,  
3 Attorney-at-Law, again at Foley Hoag Washington, USA.

4  
5 As Adviser, we have Ms Young Kim Fat, Minister Counsellor, Prime Minister's Office,  
6 Mauritius.

7  
8 As Technical Advisers, we have Mr Scott Edmonds and Ms Vickie Taylor, both of  
9 International Mapping, Ellicott City, Maryland, United States.

10  
11 As Assistant, we have Ms Nancy Lopez, again of Foley Hoag LLP, Washington, DC,  
12 USA.

13  
14 Finally, allow me to recognize our Ambassador to Germany, Her Excellency  
15 Ms Christelle Sohun, who is in the gallery.

16  
17 As you would have noted, I did not mention the name of Mr Paul Reichler, who was  
18 to be part of the Mauritius delegation as communicated to the Special Chamber on  
19 4 October. Unfortunately, for medical reasons Mr Reichler has been unable to travel  
20 to Hamburg, and he deeply regrets not being able to be here.

21  
22 Mr President, I wish to conclude the introduction of the delegation of Mauritius by  
23 assuring you and the Maldives team of our full collaboration to ensure that the  
24 hearing proceeds smoothly. Thank you, Mr President, Members of the Special  
25 Chamber.

26  
27 **THE PRESIDENT OF THE SPECIAL TRIBUNAL:** Thank you, Mr Dabee.

28  
29 I now call on the Agent of the Maldives, His Excellency Mr Ibrahim Riffath, Attorney  
30 General of the Republic of Maldives, to introduce the delegation of the Maldives.

31  
32 **MR RIFFATH:** President, Tribunal Members of the Special Chamber, Madam  
33 Registrar, members of the delegation of Mauritius, my name is Ibrahim Riffath; I am  
34 the Attorney General of the Maldives and the Maldives' Agent in these pleadings.

35  
36 It is my pleasure to introduce the members of the Maldives team. I am joined by  
37 Ms Shabeen, Deputy Attorney General of the Republic of Maldives, and Ms Mariyam  
38 Shaany, State Counsel in the Office of the Attorney General.

39  
40 Also in the delegation of counsel and advocates are: Professor Payam Akhavan of  
41 the University of Toronto and a Member of the Permanent Court of Arbitration;  
42 Professor Jean-Marc Thouvenin, of the University Paris-Nanterre; Professor Makane  
43 Moïse Mbengue, of the University of Geneva; Ms Amy Sander of Essex Court  
44 Chambers in London; and Dr Naomi Hart, also of Essex Court Chambers.

45  
46 Our delegation has two technical advisers: Mr John Brown of Cooley (UK) LLP, and  
47 Mr Alain Murphy of GeoLimits Consulting; Ms Melina Antoniadis; Ms Justine Bendel;  
48 Mr Andrew Brown and Ms Lefa Mondon assist in the delegation.

49  
50 Thank you, Mr President.



1  
2 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Riffath.

3  
4 I now give the floor to the Agent of Mauritius, Mr Dabee, to make his opening  
5 statement.

6  
7 **MR DABEE:** Mr President, Members of the Special Chamber, Honourable Agent  
8 and members of the delegation of the Republic of Maldives, it is a privilege and an  
9 honour for me to appear before you, in my capacity as Agent of the Republic of  
10 Mauritius, to open this hearing on the merits of the dispute concerning the  
11 delimitation of the maritime boundary between Mauritius and the Maldives.

12  
13 We are grateful to you, Mr President and to the Members of the Special Chamber,  
14 for the opportunity to present our claim and to engage with our colleagues from  
15 Maldives. We are also grateful to ITLOS, and in particular its Registrar and her staff,  
16 for the exemplary manner in which they have carried out their mandate throughout  
17 these proceedings.

18  
19 Mr President and Members of the Special Chamber, two years ago, exactly to the  
20 day, the Parties appeared before you – some of us here in Hamburg, others  
21 attending virtually – for the hearing concerning Maldives’ preliminary objections. Less  
22 than four months later, on 28 January 2021, the Special Chamber handed down its  
23 Judgment on Preliminary Objections confirming the Special Chamber’s jurisdiction to  
24 adjudicate on the dispute jointly submitted by the Parties concerning the delimitation  
25 of their maritime boundary in the Indian Ocean, and determining that Mauritius’ claim  
26 is admissible, subject to the requirements of article 76 of the Convention.

27  
28 As we move to the stage of the hearing on the merits, I wish to draw attention to two  
29 significant developments which have occurred since your Judgment on Preliminary  
30 Objections.

31  
32 First, in February of this year Mauritius carried out an on-site scientific and technical  
33 survey of Blenheim Reef, which is the northernmost feature of the Chagos  
34 Archipelago. The significance of the survey cannot be overstated. It was the first time  
35 that the Republic of Mauritius was able to visit, in an official capacity, the Chagos  
36 Archipelago, an integral part of its territory. As a result of the survey, Mauritius has  
37 been able to furnish a large body of scientific and technical information about  
38 Blenheim Reef, the accuracy of which is not disputed by Maldives.<sup>1</sup> Mr President, I  
39 pause here for a moment to express the sincere gratitude of the Republic of  
40 Mauritius to the Special Chamber and to the Registrar for their good offices, as well  
41 as to the Government of Seychelles for facilitating that survey.

42  
43 Second, following the survey, in August of this year, the President of the Republic of  
44 Maldives, His Excellency Mr Ibrahim Mohamed Solih, wrote to the Prime Minister of  
45 Mauritius, Hon. Pravind Kumar Jugnauth, to confirm a significant change of position  
46 on the part of Maldives.<sup>2</sup> The Maldives’ President has, in the letter, provided an  
47 assurance to the Mauritian Prime Minister that Maldives would vote “yes” to a

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<sup>1</sup> Mauritius Reply, Annex 1, Geodetic Survey of Blenheim Reef, 22 February 2022 (hereinafter “Geodetic Survey”).

<sup>2</sup> See exchange of correspondence transmitted to the ITLOS Registrar dated 30 September 2022.

1 forthcoming UN General Assembly Resolution reaffirming the ICJ’s Advisory Opinion  
2 on the *Legal Consequences of the Separation of the Chagos Archipelago from*  
3 *Mauritius in 1965* and UN General Assembly Resolution 73/295.<sup>3</sup>

4  
5 The Maldives’ President gave a further assurance that Maldives will provide every  
6 assistance to facilitate the future travel of the Prime Minister of Mauritius through  
7 Maldives to the Chagos Archipelago.

8  
9 In reliance on those assurances, Mauritius, in turn, informed Maldives of its decision  
10 to leave to the past the difficulties that arose with regard to the survey, in particular  
11 the conditions that Maldives sought to impose with respect to the composition of  
12 Mauritius’ survey team and the obtaining of “necessary clearances” from the unlawful  
13 colonial administration in the Chagos Archipelago. On the basis of Maldives’  
14 assurances, Mauritius no longer pursues its request that the Special Chamber  
15 exercise its discretion pursuant to article 34 of the ITLOS Statute and article 125 of  
16 the ITLOS Rules with regard to the significant additional costs incurred by Mauritius  
17 in carrying out the survey.

18  
19 Mr President, Maldives’ change of position is most appreciated. We are neighbouring  
20 countries with shared interests and common challenges. We welcome the clear  
21 commitment of Maldives to respect the Special Chamber’s Judgment on Preliminary  
22 Objections. It also reaffirms that, despite our differences with regard to the  
23 delimitation of our common maritime boundary, Mauritius and Maldives continue to  
24 enjoy long-standing warm and friendly relations, fostered over more than four  
25 decades. Mauritius and Maldives are Small Island Developing States which are  
26 confronted with the effects of climate change, sea-level rise, economic and  
27 environmental vulnerabilities, and inherent structural handicaps such as distance  
28 from larger markets, and are dependent on tourism, which was severely impacted by  
29 the COVID-19 pandemic. There is so much common ground between Mauritius and  
30 Maldives, on so many issues, and that is evident from the tone of the recent  
31 exchange of correspondence between the Maldives’ President and Mauritius’ Prime  
32 Minister.

33  
34 As small island States, Mauritius and Maldives appreciate the value of ocean  
35 resources and attach great importance to measures to preserve and protect the  
36 environment. The Parties also attach much importance to the matter now before you,  
37 i.e., the delimitation of our maritime boundary in the Indian Ocean.

38  
39 As anticipated in articles 74, paragraph 1, and 83, paragraph 1, of the Convention,  
40 Mauritius sought to achieve a negotiated solution for many years, first inviting  
41 Maldives to preliminary talks in June 2001.<sup>4</sup> Despite recognizing the existence of an  
42 overlap in our maritime entitlements, Maldives subsequently declined to engage in  
43 further negotiations, and that is why we are here today. Mauritius was left with no  
44 choice but to resort to Part XV of the Convention and filed its Notification of Claim

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<sup>3</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion [of 25 February 2019], I.C.J. Reports 2019*; UN General Assembly Resolution 73/295, “Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”.

<sup>4</sup> See Mauritius’ Memorial, paras. 3.2-3.5; 3.20-3.25; Mauritius’s Reply, paras. -3.7-3.11.

1 under article 287 and Annex VII of the Convention.<sup>5</sup> Mauritius did so for two reasons:  
2 first, to resolve the difference between the Parties as to their overlapping  
3 entitlements in the EEZ and the continental shelf within and beyond 200 Miles; and,  
4 second, to enable Mauritius to definitively establish its maritime spaces and  
5 sovereign rights under international law, within and beyond 200 Miles.

6  
7 On 24 September 2019, following consultations with the ITLOS President, the  
8 Parties concluded the Special Agreement by which the present dispute was  
9 submitted to this Special Chamber.<sup>6</sup> This demonstrates the confidence and faith that  
10 each of the Parties has in ITLOS, and a recognition of ITLOS's special position as  
11 the only permanent tribunal charged specifically with ensuring the proper  
12 interpretation and application of the Convention.

13  
14 Mr President, I will now briefly summarize Mauritius' first round of oral presentations  
15 in this hearing on the merits.

16  
17 Professor Sands, Mr Parkhomenko and Mr Reichhold will all address you on the  
18 delimitation within 200 Miles. First, Professor Sands will provide an overview of  
19 Mauritius' claim, including the evidential and legal consequences that flow from  
20 Mauritius' site visit to Blenheim Reef. In particular, the survey revealed vast stretches  
21 of drying reef, exposed not only at low tide, but also at Mean Sea Level, extending to  
22 19 kilometres of Blenheim Reef's perimeter, in particular in the north, facing  
23 Maldives.<sup>7</sup> The survey was most useful in establishing the extent of Blenheim Reef  
24 as a drying reef. Consequently, Blenheim Reef qualifies both as a low-tide elevation  
25 for the purposes of article 13, paragraph 1, of the Convention and also as a "drying  
26 reef" within the meaning of article 47. Under either of these provisions, in Part II and  
27 Part IV of the Convention, Blenheim Reef, which lies less than 12 Miles from  
28 Takamaka Island, must therefore be regarded as an integral part of Mauritius' coast  
29 from which to measure the territorial sea, the EEZ and continental shelf, within and  
30 beyond 200 Miles. Pursuant to those provisions, and in accordance with relevant  
31 judicial practice, Blenheim Reef is entitled to supply basepoints from which to  
32 construct a median or equidistance line. Professor Sands will also outline the points  
33 of agreement between the Parties and the four points of disagreement which you are  
34 tasked with resolving.

35  
36 Mr Parkhomenko's presentation, which will follow that of Professor Sands', will focus  
37 on Part II of the Convention. He will explain why, at the first stage of the now well-  
38 established three-stage delimitation process that both Parties agree upon, Blenheim  
39 Reef – as a low-tide elevation within the meaning of article 13, paragraph 1 – must  
40 be taken into account in the construction of the provisional equidistance line within  
41 200 Miles. As the Members of the Special Chamber are aware, the construction of  
42 the provisional equidistance line in stage one of the process is an objective,  
43 mathematical process without room for subjective judgments about particular  
44 geographic features. This rule has been laid down by no less an authority than this

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<sup>5</sup> Mauritius Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, dated 18 June 2019.

<sup>6</sup> Special Agreement and Notification dated 24 September 2019.

<sup>7</sup> Mauritius's Reply, Annex 1, Geodetic Survey, p. 5.

1 eminent Tribunal in the *Bangladesh v. Myanmar* case,<sup>8</sup> as well as by the ICJ and  
2 Annex VII tribunals. Mr Parkhomenko will conclude his presentation by showing you  
3 the provisional equidistance line that results from this objective process, taking  
4 account of all features on the relevant coasts of both Parties, including Blenheim  
5 Reef.

6  
7 Professor Sands will then address you on Part IV of the Convention, and the  
8 maritime entitlements which flow from Mauritius' archipelagic baselines. As an  
9 archipelagic State, Mauritius, in line with its entitlement, has drawn archipelagic  
10 baselines encompassing Blenheim Reef as a "drying reef" within the meaning of  
11 article 47 of the Convention. That provision makes no distinction whatsoever  
12 between a drying reef and an island. As such, Mauritius' archipelagic baselines  
13 encompassing Blenheim Reef confer precisely the same entitlement to a full  
14 maritime area, up to and beyond 200 Miles, in the same way as a baseline along the  
15 low-water line around an island, or along a mainland coastline.

16  
17 As Professor Sands will explain, this case features a unique characteristic: it is, as  
18 far as we can ascertain, the first time that an international court or tribunal has been  
19 tasked with delimiting the maritime boundary between two archipelagic States. It  
20 would be contrary to Part IV of the Convention, in such a case, to ignore, or  
21 disregard, the archipelagic baselines of one of those States, especially in a situation  
22 where they have been drawn in strict compliance with article 47 and gained wide  
23 international approval and acceptance. Professor Sands will show that, in stage one  
24 of the three-stage process, with basepoints properly placed along Mauritius'  
25 archipelagic baselines at Blenheim Reef, the resulting provisional equidistance line is  
26 exactly the same as the one shown by Mr Parkhomenko on the basis of article 13.

27  
28 Next, Mr Reichhold will take you through stages two and three of the three-stage  
29 process, on the basis of the provisional equidistance line that results from stage one,  
30 under either of Mauritius' two approaches: namely, treatment of Blenheim Reef as a  
31 low-tide elevation integrally connected to Mauritius' coast, or as a drying reef along  
32 Mauritius' archipelagic baselines; and he will demonstrate that at the second stage,  
33 there are no special or relevant circumstances calling for any adjustment to the  
34 provisional equidistance line, which is neither disproportionate nor prejudicial to  
35 Maldives in any significant way. Then he will demonstrate that the unadjusted  
36 equidistance line passes the disproportionality test at stage three, and that this line is  
37 almost perfectly proportionate, and constitutes the equitable solution that articles 74  
38 and 83 of the Convention require.

39  
40 Mr Reichhold will conclude with Mauritius' submission on the boundary within 200  
41 Miles, that is, an unadjusted equidistance line taking account of all basepoints on the  
42 two Parties' relevant coasts, including those drawn around Blenheim Reef.

43  
44 Following Mr Reichhold, Professor Klein will begin Mauritius' presentation on the  
45 delimitation beyond 200 Miles by addressing you on Maldives' outstanding  
46 preliminary objection in relation to jurisdiction and admissibility. First, Professor Klein  
47 will demonstrate that the Special Chamber is competent to proceed with the

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<sup>8</sup> *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4.

1 delimitation of the continental shelf beyond 200 Miles. This has been an integral part  
2 of the maritime delimitation dispute between the Parties from 2010 onwards and falls  
3 within the ambit of Mauritius' Notification and the Special Agreement.<sup>9</sup> Second,  
4 Professor Klein will show that Mauritius has made a timely submission to the  
5 Commission on the Limits of the Continental Shelf ("CLCS") with regard to the  
6 Northern Chagos Archipelago Region and that Maldives has had a full and proper  
7 opportunity to respond to Mauritius' extended continental shelf claim.

8  
9 Thereafter, Dr Badal will make a submission on the scientific and technical material  
10 concerning Mauritius' entitlement to an extended continental shelf, included in  
11 Mauritius' submission to the CLCS, giving rise to overlapping entitlements between  
12 the Parties beyond 200 Miles. First, he will address the geomorphological and  
13 geophysical circumstances, confirming the existence of a natural prolongation  
14 extending from the northern portion of the Chagos Archipelago. Second, he will  
15 address the test of appurtenance and the delineation of Mauritius' extended  
16 continental shelf.

17  
18 In relation to the letter of the honourable Agent of Maldives dated 10 October 2022,  
19 I wish to make clear that Dr Badal addresses the Special Chamber in his capacity as  
20 counsel for Mauritius. The matters to which Dr Badal will refer go no further than  
21 those set out in Mauritius' submissions to the CLCS, and to the extent that it is  
22 necessary to respond to the points raised by Maldives in its Rejoinder. He is not a  
23 witness and his submissions to the Special Chamber will address the evidence that  
24 has already been submitted with Mauritius' pleadings.

25  
26 Finally, Mr Loewenstein will address you on the equitable delimitation of the Parties'  
27 overlapping entitlements in the extended continental shelf beyond 200 Miles,  
28 amounting to approximately 22,272 square kilometres. Whereas Maldives invites you  
29 to apportion the area in the ratio of 99-to-1 in its favour, Mr Loewenstein will show  
30 that pursuant to article 83, paragraph 1, the Convention mandates an equitable  
31 solution, which, in the circumstances of this case, is achieved by according each  
32 Party an equal share of the overlapping entitlements beyond 200 Miles.

33  
34 Mr President, Members of the Special Chamber I would like to take this opportunity  
35 to reiterate that Mauritius would welcome the appointment of an expert to prepare an  
36 opinion on the scientific and technical issues concerning the delimitation of the  
37 continental shelf beyond 200 Miles, should the Special Chamber consider it  
38 necessary to do so. We respectfully submit that the Special Chamber would benefit  
39 from an expert opinion on the hydrography, geology and geomorphology of the area  
40 at issue. We have presented our detailed views on the matter in our letter of  
41 30 August 2022, and responded to Maldives' objections in our letter of 5 September  
42 2022. For the reasons set out in the letters, Mauritius stands by its earlier  
43 communications.<sup>10</sup>  
44

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<sup>9</sup> Mauritius' Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, dated 18 June 2019; Special Agreement and Notification dated 24 September 2019.

<sup>10</sup> See exchange of correspondence transmitted to the ITLOS Registrar dated 30 August 2022 (Mauritius); 31 August 2022 (Maldives) and 5 September 2022 (Mauritius) in response to the Tribunal's communication dated 16 August 2022.

1 Mr President, Members of the Special Chamber, it is a privilege for Mauritius to  
2 participate in these proceedings before this Special Chamber of ITLOS. My  
3 delegation will remain available to provide any such assistance as the Special  
4 Chamber might need. We will be pleased to offer our fullest collaboration and  
5 cooperation to the delegation for Maldives in making this hearing as helpful as  
6 possible for the Special Chamber. In addition to the questions communicated to the  
7 Parties yesterday afternoon, we would welcome, of course, further questions from  
8 the Special Chamber.

9  
10 I also wish to inform the Special Chamber that we have already provided the  
11 supporting scientific and technical data of the Submission made by Mauritius to the  
12 CLCS in April 2022. This addresses question 4 in the list of questions received  
13 yesterday afternoon. Questions 1, 2 and 3 will be answered in the presentations of  
14 the members of our delegation later today.

15  
16 To assist the Special Chamber, we have provided a folder for each Judge. This  
17 contains the recent correspondence between the Maldives' President and Mauritius'  
18 Prime Minister to which I referred earlier, and copies of the graphics that will appear  
19 on your screens throughout the day. Copies of our Judges' folders have also been  
20 provided to the ITLOS Registry and to our friends from Maldives.

21  
22 Mr President, I now respectfully request that you invite Professor Sands to make his  
23 first presentation. Thank you, Mr President and Members of the Special Chamber,  
24 for your kind attention.

25  
26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Dabee. I now give  
27 the floor to Mr Philippe Sands to make his statement. You have the floor, Sir.

28  
29 **MR SANDS:** Mr President, Members of the Special Chamber, it is a privilege to  
30 appear before you once again on behalf of Mauritius and here in person, in  
31 Hamburg. My task this morning is to introduce Mauritius' arguments, with a focus on  
32 two aspects of this case. First, I am going to address certain evidential and legal  
33 consequences that flow from the site visit that Mauritius was able to carry out a few  
34 months ago, in the northern parts of the Chagos Archipelago. Second, I will address  
35 the key points of agreement and disagreement between the Parties; as with so many  
36 cases, the written pleadings have allowed those issues to be narrowed.

37  
38 Mr President, allow me to begin with the site visit and to start with some words of  
39 appreciation which followed this Tribunal's clear judgment on jurisdiction. Mauritius,  
40 as you know, was able to organize and conduct a site visit. It is not possible to  
41 overstate the significance of the visit.<sup>1</sup> You get a sense from this video, which is of  
42 course in the public domain, of the nature of the location.

43  
44 The voyage was historic: it was the first visit ever organized by the Republic of  
45 Mauritius to the Chagos Archipelago since the territory was unlawfully detached and  
46 Mauritius gained its independence in 1968. It was the first time that members of the  
47 Chagossian community, who had been forcibly removed from the Chagos

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<sup>1</sup> Cullen Murphy, "They Bent to Their Knees and Kissed the Sand", *The Atlantic* (15 June 2022), available at <https://www.theatlantic.com/magazine/archive/2022/07/reclaiming-chagos-islands-british-colonization/638444/> (last accessed 15 October 2022).

1 Archipelago, could return without an armed British escort.<sup>2</sup> It was the first time the  
2 flag of the Republic of Mauritius flew over the archipelago; the islands of Peros  
3 Banhos, Salomon and Blenheim Reef. And it was the first time that Mauritius – or  
4 indeed anybody, ever – had conducted a rigorous scientific and technical survey of  
5 certain maritime features and the appurtenant waters.  
6

7 Back then, earlier this year, the enthusiasm of the Maldives for the visit was perhaps  
8 not entirely unbridled, but there has been a change of tone, as noted by our Agent,  
9 which we warmly welcome, with assurances on which Mauritius has placed reliance.  
10 Mauritius looks forward to being able to count on the full support of the Maldives in  
11 facilitating travel to and from, and other activities in relation to, the Chagos  
12 Archipelago. This is exactly as it should be between two friendly, neighbouring  
13 countries; it is a seamless connection between Africa and Asia.  
14

15 In the end, the journey had to be arranged from Seychelles. On 8 February of this  
16 year, a Mauritian team of 25 individuals boarded the vessel *Bleu de Nîmes* at the  
17 port in Mahé. Led by Ambassador Koonjul, the group comprised scientists from the  
18 Mauritian Department for Continental Shelf, Maritime Zones Administration and  
19 Exploration (CSMZAE), two marine scientific experts from Sweden, members of the  
20 Mauritian legal team, government officials, Mauritian and international journalists and  
21 five members of the Chagossian community who have particular knowledge of the  
22 islands, including the area around Blenheim Reef.  
23

24 It took five days to sail the 975 nautical miles from Mahé to Peros Banhos. The  
25 survey team then spent five full days at Blenheim Reef, Peros Banhos and Salomon.  
26 It took another five days to then sail back to Mahé.  
27

28 The results of the scientific and technical survey are set out in the Geodetic Survey  
29 Report of Ola Oskarrson and Thomas Mennerdahl. They provided new, detailed,  
30 objectively verifiable and significant material and evidence, which Mauritius has put  
31 before the Special Chamber in its Reply.<sup>3</sup> As a result of this survey, Mauritius has  
32 been able to obtain more accurate and detailed information about Blenheim Reef,  
33 and we hope this might assist the Special Chamber. Of particular significance is the  
34 new evidence revealed by the survey which established the existence of extensive  
35 areas of “drying reef” – I use these words in the sense of article 47 of the 1982  
36 Convention – along the northern, eastern and western flanks of Blenheim Reef’s  
37 seaward perimeter. This includes the areas that directly face Maldives, and so are  
38 directly relevant for the delimitation of the maritime boundary.  
39

40 Let us be clear: Mauritius, the Maldives and everyone else was previously aware of  
41 the existence of some drying reef on Blenheim, but this information was only to be  
42 found in remote satellite imagery and large-scale hydrographic charts. The new  
43 information – on the nature and extent of the drying reef – was not known. The site  
44 visit, and the scientific investigation that was carried out, has changed the state of

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<sup>2</sup> Chiamaka Okafor, “Mauritius hoists flag on Chagos Archipelago, says it’s reclaimed territory from Britain”, *The Premium Times* (15 February 2022), available at <https://www.premiumtimesng.com/foreign/africa/511647-mauritius-hoists-flag-on-chagos-archipelago-says-its-reclaimed-territory-from-britain.html> (last accessed 15 October 2022).

<sup>3</sup> Ola Oskarrson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, (hereinafter “the Survey Report”), 22 February 2022, Mauritius Reply, Vol. III, Annex 1.

1 our knowledge. Before the investigation, it was not known that the drying reef  
2 extends to some 19 kilometres of Blenheim Reef’s circumference.<sup>4</sup> The Special  
3 Chamber can now proceed on the basis of evidence that has been corroborated by  
4 an independent expert, Dr David Dodd.<sup>5</sup> The results of the survey, and of Dr Dodd’s  
5 opinion, have not been challenged by the Maldives.  
6

7 I turn first to the findings of the survey, the unchallenged findings, which are set out  
8 in the Reply. Blenheim Reef, which you can see in the top right-hand corner of the  
9 plate on your screens, is situated on the north-eastern fringe of the Chagos  
10 Archipelago. It is some 10.6 nautical miles east-northeast of Salomon Islands Atoll.  
11 Blenheim Reef covers approximately 36 square kilometres. It is a lagoon encircled  
12 by coral heads, rocks and unconsolidated material, including sand and granulated  
13 coral. From north to south, Blenheim Reef extends for 9.6 km, whilst at its widest  
14 point, from east to west, it spans 4.7 km.<sup>6</sup> The north-eastern part of Blenheim Reef,  
15 which faces Maldives and which you can see from the air (you can see on this plate  
16 right now) features very extensive areas of drying sand, coral sand and coral blocks.  
17 In its written pleadings, Maldives would have you believe this is a small and  
18 insignificant feature. It is not, as you can see on your screens, with the survey  
19 vessel, tiny in the foreground, for scale.  
20

21 From 13 to 16 February 2022, Mauritius carried out a geodetic survey of Blenheim  
22 Reef – you can see the whole area on your screens on the plate in front of you. This  
23 was based on tide models and *in situ* surveys undertaken using advanced pressure  
24 tidal recorders, satellite receivers, and aerial photography from low-flying drones, as  
25 you can see on the screens. Using these instruments, the survey team calculated  
26 the tide model of Blenheim Reef, which was then used to calculate the Mean  
27 Seawater Level (MSL), the Lowest Astronomical Tide (LAT), and the Highest  
28 Astronomical Tide (HAT). On the next plate you can see the rise and fall of the water  
29 level – approximately 1.6 metres – over nine days. As a result, the survey team  
30 identified rocks and coral heads located along the perimeter of the lagoon, as well as  
31 extensive areas of drying sands that were exposed at Mean Sea Level along the  
32 reef’s outermost perimeter, as you can see on this next plate.  
33

34 The Survey Report sets out the details of the equipment used and where precisely it  
35 was positioned along the reef.<sup>7</sup> The findings of Blenheim Reef’s geographic status  
36 relative to Lowest Astronomical Tide were confirmed by the use of drones that  
37 captured high and low altitude images of the reef, as you can see from this plate.  
38 The images clearly show extensive areas of drying reefs and sands, including  
39 exposed coral heads. These features begin to uncover at or near Mean Seawater  
40 Level and extend significantly in area as the tidal flow reaches Lowest Astronomical  
41 Tide.

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<sup>4</sup> *Ibid.*, p. 5.

<sup>5</sup> Dr David Dodd, Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references, 28 March 2022, Mauritius’ Reply, Vol. III, Annex 2.

<sup>6</sup> The Survey Report, p. 5.

<sup>7</sup> The operation included placement of two water level recorders on the seafloor of the reef’s lagoon; three “global navigation satellite system” (GNSS) recording base stations were located along Blenheim’s drying reefs based on report prepared by EOMAP. Finally, selected areas were photographed using low-flying drones to produce orthomosaics and photogrammetry models of the more significant areas where drying reefs were prevalent.



1 Maldives says this is a “reef covered with water and waves just breaking at its  
2 highest point.”<sup>8</sup> But it is not, as you can see from these three images that are now on  
3 the screens. Of course, although I cannot give testimony as a witness, I can tell you  
4 that I was there and I walked on this drying reef. The survey team established that  
5 there were numerous rocks, coral heads and drying reefs exposed at Mean Sea  
6 Level. This directly contradicts Maldives’ claim that Blenheim Reef is “barely above  
7 water at lowest tides and completely submerged at other times.”<sup>9</sup>

8  
9 Drones were used to take overlapping photos within the survey area, which were  
10 then processed by specialist software, to create a single orthomosaic image. The  
11 one you can see on your screens is at position 3, along the north-eastern coastline  
12 of Blenheim Reef, directly facing Maldives. This image shows large swathes of  
13 drying reef.

14  
15 Along the north-eastern edge of Blenheim Reef there are many such areas of drying  
16 sands and coral blocks easily visible as soon as the tide begins to drop from its  
17 highest levels. In total, 70 per cent – 70 per cent – of the reef’s entire circumference  
18 of 27.2 kilometres – that is, some 19 kilometres – is composed primarily of drying  
19 reefs.<sup>10</sup> I should add, Mr President, that these scientific findings are not contested in  
20 the Maldives’ Rejoinder.

21  
22 While the seafloor surrounding the reef, and the seafloor within the enclosed lagoon,  
23 is mainly composed of a mix of coral fragments, sand and a granulated coral and  
24 sand mix, the drying reefs have a more consolidated appearance. They consist  
25 primarily of rocky coral beds and outcroppings, coral sand and larger coral fragments  
26 scattered throughout their rugged surfaces.<sup>11</sup>

27  
28 Mr President, Mauritius has only been able to obtain this information and evidence  
29 as a result of the on-site survey. To visit Blenheim Reef for the first time, as occurred  
30 on the morning of 13 February, was transformative of the state of our knowledge of  
31 the reef. The scientists were struck by the vastness of Blenheim Reef, stretching as  
32 far as the eye can see and beyond. They were struck by the nature and extent of  
33 those parts of the reef that were “drying”, and by the number and size of rock and  
34 coral outcroppings. The satellite imagery and large-scale charts, which is all that  
35 Mauritius had access to before the survey, had not prepared the team for the extent  
36 of the “drying reef” that could be seen above water at Mean Sea Level. It is difficult to  
37 overstate the enormity of Blenheim Reef or, indeed, its beauty.

38  
39 It was these observations that caused the legal team to consider the implications of  
40 the true nature – on the basis of facts and evidence – of Blenheim Reef, and to  
41 revisit the text of the 1982 Convention, and in particular its Part IV, on Archipelagic  
42 States. We re-read those articles, and in particular the provisions on archipelagic  
43 baselines. With this different eye we looked again at article 47, paragraph 1, which  
44 provides that an “archipelagic State may draw straight archipelagic baselines joining  
45 the outermost points of the outermost islands and drying reefs of the archipelago”,  
46 provided that certain conditions are met. And article 48, which states that

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<sup>8</sup> Maldives’ Counter-Memorial, para. 108.

<sup>9</sup> Maldives’ Counter-Memorial, para. 104.

<sup>10</sup> The Survey Report, p. 5.

<sup>11</sup> *Ibid.*

1 [t]he breadth of the territorial sea, the contiguous zone, the exclusive  
2 economic zone and the continental shelf shall be measured from the  
3 archipelagic baselines drawn in accordance with article 47.  
4

5 Mr President, the on-site survey – and the vast swathes of drying reef seen by the  
6 experts of Mauritius – caused the Applicant to reflect further, and to revisit and refine  
7 the approach adopted in the Memorial with regard to the delimitation with which you  
8 are faced.  
9

10 Significantly, Maldives does not contest any of the findings of the geodetic survey. At  
11 paragraph 5 of the Rejoinder, Maldives asserts that the survey is “irrelevant”,  
12 because it does no more than confirm

13  
14 what was already common ground between the Parties: namely, that  
15 Blenheim Reef includes ‘drying reefs’ which are above water only at low-  
16 tide, constituting LTEs under UNCLOS Article 13.<sup>12</sup>  
17

18 Mr President, with these words in mind, was it the case, in fact, that the Parties had  
19 agreed that Blenheim Reef consisted of “drying reefs” within the meaning of  
20 article 47 of the Convention? It was not. If you review the entirety of the Maldives’  
21 Counter-Memorial, you will see that the words “drying reef” do not appear in the  
22 pleading, not once. The existence, nature and effect of Blenheim’s “drying reefs”  
23 were not in the minds of the drafters of that pleading. And that fact – for it is a fact –  
24 rather begs the question: how can Maldives have had common ground with  
25 Mauritius, on the matter of the legal effects of the drying reefs, if it had not turned its  
26 mind to those words – “drying reefs”? Moreover, as the survey has now – and newly  
27 – made clear, the extensive areas of drying reef are above water not only at Lowest  
28 Astronomical Tide, but also at Mean Sea Level.  
29

30 What are the legal consequences of this fact, established by incontrovertible – and  
31 uncontroverted – proof before the Tribunal?  
32

33 The evidence before the Tribunal establishes that the drying reefs of Blenheim Reef  
34 make it an extensive low-tide elevation within the meaning of article 13 of the  
35 Convention. It is not, however, 57 separate low-tide elevations, as now claimed by  
36 Maldives.<sup>13</sup> We have no idea, incidentally, where the number 57 comes from, as it is  
37 not in our pleadings and it is not in the Survey Report. As an extended low-tide  
38 elevation – situated approximately 10.5 Miles from Île Takamaka in Salomon Islands  
39 Atoll, which is permanently above water – Mauritius is entitled to locate basepoints  
40 on Blenheim Reef, and these basepoints can properly be utilized for the delimitation.  
41 This is what we set out in our Memorial.<sup>14</sup> Mr Parkhomenko will address this aspect  
42 following my presentation and make clear that Maldives’ attempts to minimize the  
43 significance of the reef, for the purpose of excluding it from the well-established  
44 procedure for delimitation of the maritime boundary between Mauritius and Maldives,  
45 are entirely without merit.  
46

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<sup>12</sup> Maldives’ Rejoinder, para. 5(a).

<sup>13</sup> Maldives’ Rejoinder, paras. 5b, 19, 25, 42, 64.

<sup>14</sup> Mauritius’ Memorial, paras. 2.20, 4.28-4.30.

1 However, Mr President, this is not the only basis for the submissions of Mauritius. As  
2 a consequence of the site visit, it is now apparent to us that there is another  
3 approach, one that leads to – and buttresses – the very same line of delimitation for  
4 which Mauritius argues. As I have mentioned, the extensive areas of drying reef at  
5 Blenheim Reef were not apparent from satellite imagery or from other sources. They  
6 provide a complementary approach to the use of basepoints on Blenheim Reef, as a  
7 low-tide elevation.

8  
9 The Special Chamber will be aware that Mauritius' basepoints on Blenheim Reef –  
10 the coordinates for which are set out in the Memorial and Reply – are located not  
11 only on Mauritius' coast, but also along Mauritius' archipelagic baselines. As an  
12 archipelagic State, Mauritius is entitled to use its archipelagic baselines in relation to  
13 Blenheim Reef as the basis for all its maritime entitlements. As article 48 makes  
14 clear: the territorial sea, EEZ, continental shelf and extended continental shelf are all,  
15 in accordance with Part IV of the Convention, to be derived from its archipelagic  
16 baselines.

17  
18 Moreover, the baselines are also to be utilized for the construction of the  
19 equidistance line to delimit the Parties' overlapping entitlements within 200 Miles. As  
20 an archipelagic State, Mauritius is entitled, as a matter of law, to use its archipelagic  
21 baselines to delimit its maritime boundary with the Maldives.

22  
23 I am going to address this in more detail later today, but, in short, Blenheim Reef is  
24 both a low-tide elevation under article 13 of the Convention, and a feature with  
25 extensive areas of "drying reef" within the meaning of article 47. Here, one aspect of  
26 the Convention needs to be teased out. This is relevant for your third question, which  
27 I am going to come to in my second presentation today.

28  
29 Every drying reef is also a low-tide elevation but not every low-tide elevation is a  
30 drying reef. And, under article 47, paragraph 1, of the Convention, the entitlements of  
31 a coastal State that derive from a drying reef may be more extensive than those that  
32 may arise from a low-tide elevation. As Mr Parkhomenko and I will explain, articles  
33 13, 74 and 83, along with Part IV of the Convention, result in Blenheim Reef being  
34 entitled to full effect in the delimitation of the Parties' overlapping entitlements, up to  
35 and beyond 200 Miles.

36  
37 Mr President, Members of the Special Chamber, I turn to the second part of my  
38 presentation: the areas of agreement and disagreement between the Parties. Having  
39 read the pleadings, you will be aware that there are now significant areas of  
40 agreement which narrow the task of the Special Chamber.

41  
42 First, Mauritius and Maldives agree on the methodology to be adopted in relation to  
43 the delimitation of the maritime boundary within 200 Miles. They both invite you to  
44 adopt the well-established three-step methodology, often referred to as the  
45 "equidistance/relevant circumstances" method, which ITLOS, the ICJ and arbitral  
46 tribunals have regularly applied to achieve an equitable delimitation of maritime  
47 spaces.<sup>15</sup>

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<sup>15</sup> Mauritius' Memorial, paras. 4.2, 4.14-4.47; Maldives' Counter-Memorial, paras. 5, 9, 113; Mauritius' Reply, paras. 1.3(a); Maldives' Rejoinder, para. 2(a).

1 Second, there are significant areas of agreement with respect to the basepoints for  
2 the construction of the provisional equidistance line. Mauritius agrees with the  
3 selection of all 39 basepoints located on the southern coast of Addu Atoll in the  
4 Maldives, which you can see on your screens. The Parties are also in agreement  
5 with respect to nine of the 13 basepoints on the left-hand side of the screen here on  
6 Peros Banhos Atoll, but they do not agree on the four basepoints, numbers 10 to 13,  
7 located on Blenheim Reef. I will say more about these basepoints, and C83, C84  
8 and C85, later on this morning.

9  
10 Third, and subject to one point, the Parties agree that there are no relevant  
11 circumstances that call for any adjustment of the provisional equidistance line in the  
12 maritime areas up to 200 Miles.<sup>16</sup> The one caveat is that Maldives argues that an  
13 adjustment would be required if the Special Chamber were to give Blenheim Reef full  
14 effect,<sup>17</sup> an argument with which Mauritius is in profound disagreement, as there is  
15 no basis in the Convention or in the jurisprudence for that approach. The Parties also  
16 agree that the provisional equidistance line does not in any event produce a result  
17 that is grossly disproportionate and requiring adjustment.<sup>18</sup>

18  
19 Fourth, Mauritius and Maldives agree that Blenheim Reef is a low-tide elevation  
20 within the meaning of article 13.<sup>19</sup> That said, Maldives seeks to minimize its  
21 significance and effect, arguing in its Counter-Memorial that Blenheim Reef is “barely  
22 above water at lowest tides and completely submerged at other times.”<sup>20</sup> It was this  
23 assertion, in part, that prompted Mauritius to recognize the need to ascertain the  
24 facts on the ground, so to speak, and conduct the on-site survey.

25  
26 Having initially conceded that Blenheim Reef was a low-tide elevation, the Maldives  
27 has now changed its position: in its Rejoinder it now asserts that Blenheim Reef is  
28 actually 57 “distinct LTEs rather than a single LTE”.<sup>21</sup> We do not know where the  
29 57 comes from. It sounds a bit like Heinz’s claim that its famous ketchup comprises  
30 57 different varieties of tomato. But that claim, as with the ketchup, is false.<sup>22</sup>  
31 Mr Parkhomenko will address this point shortly.

32  
33 Fifth, it is also common ground between the Parties that Blenheim Reef includes  
34 areas of “drying reef”.<sup>23</sup> The Parties disagree, however, on the extent of those  
35 “drying reefs” and the legal consequences that are to be drawn from the evidence in  
36 relation to Part IV of the Convention. I will address this in my second presentation.  
37

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<sup>16</sup> Mauritius’ Memorial, paras. 4.32-4.38; Maldives’ Counter-Memorial, para. 151; Mauritius’ Reply, para. 1.3(c); Maldives’ Rejoinder, para. 2(e).

<sup>17</sup> Maldives’ Counter-Memorial, paras. 151-152; Maldives’ Rejoinder, footnote 7.

<sup>18</sup> Mauritius’ Memorial, paras. 4.39-4.47; Maldives’ Counter-Memorial, paras. 153-158; Mauritius’ Reply, para. 1.3(d), 2.84-2.88; Maldives’ Rejoinder, para. 2(f).

<sup>19</sup> Mauritius’ Memorial, para. 2.20 *et seq.*; Maldives’ Counter-Memorial, para. 106.

<sup>20</sup> Maldives’ Counter-Memorial, paras. 104, 108 (“For significant periods of time, Blenheim Reef is fully submerged.”)

<sup>21</sup> Maldives’ Rejoinder, para. 5(b).

<sup>22</sup> Nathaniel Meyersohn, “How Heinz uses a fake number to keep its brand timeless”, *CNN* (19 February 2022) available at <https://edition.cnn.com/2022/02/19/business/heinz-ketchup-57-varieties-history/index.html> (last accessed 15 October 2022).

<sup>23</sup> Maldives’ Rejoinder, para. 5(a).

1 I now turn to the areas of disagreement that will need to be addressed by the Special  
2 Chamber. In our submission, there are four significant points of disagreement.

3  
4 First, the Parties disagree on the application of the methodology in delimiting  
5 overlapping entitlements within 200 Miles, having regard to the geographic  
6 circumstances of the case. The disagreement centres on the nature of, and effect to  
7 be accorded to, Blenheim Reef in the delimitation process: should basepoints for the  
8 construction of the provisional equidistance line be located on Blenheim Reef either,  
9 or both, as a low-tide elevation under article 13 or as a drying reef within the  
10 meaning of article 47 of the Convention? We say yes, under both articles, and that to  
11 give Blenheim Reef full effect, as the law plainly requires, does not result in, as  
12 Maldives claims, “an extraordinarily disproportionate effect”.<sup>24</sup>

13  
14 In addressing these points, Mr Parkhomenko and I will rebut Maldives’ arguments  
15 that Blenheim Reef, one, is not part of the relevant coast of Mauritius; and, two, that  
16 it is not an appropriate location for basepoints.

17  
18 The second disagreement between the Parties – which is related to the first – is on  
19 the legal effect to be given to the proven fact that there are extensive areas of  
20 “drying reef” at Blenheim, as established by the survey. In its Reply, Mauritius set out  
21 in detail the legal consequences of this fact, as required by Part IV of the  
22 Convention.<sup>25</sup> It is notable that in its Rejoinder, Maldives has offered no evidence of  
23 its own to counter the evidence we presented in the Reply. It is equally notable that  
24 Maldives has rather failed to address all the submissions we made on Part IV of the  
25 Convention, including in particular the interpretation and application of article 47 and  
26 the relevance of drying reefs for archipelagic coastal States. It offered just 13 cursory  
27 paragraphs.<sup>26</sup>

28  
29 Third, the Parties disagree with respect to the scope of the Special Chamber’s  
30 jurisdiction to delimit the continental shelf beyond 200 Miles. Mauritius submits that it  
31 has established that both Parties have an extended continental shelf beyond  
32 200 Miles from their respective coasts; that the Parties’ entitlements in this area  
33 overlap; and that there is no reason for the Tribunal to decline to exercise jurisdiction  
34 over this or any other part of Mauritius’ claim. Maldives, on the other hand, argues  
35 that the Special Chamber does not have jurisdiction to delimit the continental shelves  
36 beyond 200 Miles because there was, allegedly, no dispute in respect of overlapping  
37 extended continental shelf claims when Mauritius filed its claim. It also argues that  
38 Mauritius’ claim is inadmissible because it has only submitted preliminary  
39 information, not a full submission, to the CLCS, and, allegedly this was submitted  
40 after the expiration of the time-limit for doing so. Professor Klein will address these  
41 arguments on jurisdiction and admissibility this afternoon, including the argument  
42 that Mauritius is somehow attempting to “significantly expand” the dispute between  
43 the Parties “by making an entirely new claim to an OCS.”<sup>27</sup> Professor Klein will  
44 establish that there is no reason for the Tribunal to limit its jurisdiction to the  
45 delimitation of the Parties’ maritime boundary within 200 Miles.

24 Maldives’ Counter-Memorial, para. 152.

25 Mauritius’ Reply, para. 2.20 *et seq.*

26 Maldives’ Rejoinder, paras. 55-67.

27 Maldives’ Counter-Memorial, para. 6. Also Maldives Rejoinder, para. 6 *et seq.*

1 Fourth and finally, there are two disagreements with respect to the delimitation  
2 beyond 200 Miles. Maldives contests Mauritius' entitlement to an extended  
3 continental shelf under article 76 of the Convention, arguing that it is "manifestly  
4 unfounded".<sup>28</sup> Dr Rezah Badal will address you on Mauritius' entitlement under  
5 article 76 later today. Maldives also takes issue with the methodology to be adopted  
6 in the division of overlapping entitlements beyond 200 Miles pursuant to article 83 of  
7 the Convention, requiring an equitable solution, a matter which will be addressed by  
8 Mr Andrew Loewenstein.

9  
10 Mr President, Members of the Special Chamber, that concludes my presentation.  
11 You will have noted, I am sure, that in certain respects the case brought to you by  
12 the Parties is a discrete one. It is not, however, without significance or interest. This  
13 appears to be the first case in which the delimitation of the maritime boundary  
14 between two archipelagic States has been brought to any international court or  
15 tribunal. In addressing this aspect of the case, the Special Chamber and ITLOS have  
16 a significant role to play in confirming the correct interpretation and application of  
17 Part IV of the Convention. In so doing, the Special Chamber will cement the place of  
18 the Tribunal in playing a leading role in the life of the Convention, and in upholding  
19 the rule of law and in fully resolving the dispute that exists between these two  
20 friendly neighbouring countries.

21  
22 I thank you, Mr President, Members of the Tribunal, for your kind attention and now  
23 ask that you invite Mr Parkhomenko to address you on the delimitation of the  
24 maritime boundary up to 200 Miles.

25  
26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Sands. I now give  
27 the floor to Mr Yuri Parkhomenko to make his statement.

28  
29 **MR PARKHOMENKO:** Mr President, Members of the Special Chamber, it is an  
30 honour and a privilege for me to appear before you today and to do so on behalf of  
31 the Republic of Mauritius. My pleasure, however, is tempered by the fact that my  
32 mentor Mr Reichler cannot appear before you today, but he looks forward to  
33 appearing before you at the next opportunity.

34  
35 As Professor Sands has shown, Blenheim Reef is both a low-tide elevation under  
36 article 13 of UNCLOS and a drying reef under article 47. As such, Blenheim Reef  
37 must be treated as part of Mauritius' relevant coast for purposes of this delimitation,  
38 and under both articles must be used in constructing a provisional equidistance line  
39 in the first stage of the three-stage delimitation process, as defined by the ICJ in the  
40 *Black Sea* case, adopted by ITLOS in *Bangladesh/Myanmar*, and followed by this  
41 Tribunal ever since.<sup>1</sup> The Parties agree that the delimitation of the maritime  
42 boundary within 200 Miles is to be carried following the three-stage process.<sup>2</sup>

43  
44 The main point of difference between the Parties is whether Blenheim Reef is to be  
45 considered part of Mauritius' coast and given effect in constructing the provisional

---

<sup>28</sup> Maldives' Counter-Memorial, para. 55(b)(ii), para. 79 *et seq*; Maldives' Rejoinder, Chapter 2.

<sup>1</sup> See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, paras. 116-122; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 240.

<sup>2</sup> Counter-Memorial of the Republic of Maldives, para. 113.

1 equidistance line during the first stage of the process. Mauritius insists that, under  
2 the applicable law, Blenheim Reef is an integral part of its relevant coast, and that it  
3 must be taken into account in constructing the provisional equidistance line.  
4 Maldives argues the opposite, that Blenheim Reef must be disregarded in  
5 constructing an equidistance line, even at the first stage of the three-stage  
6 delimitation process.

7  
8 So, in this presentation, I will focus on stage one, and demonstrate why, for both  
9 geographical and legal reasons, Blenheim Reef must be taken into account in  
10 constructing the provisional equidistance line.

11  
12 Following my presentation, Professor Sands will explain why the same provisional  
13 equidistance line results if – instead of treating Blenheim Reef as a low-tide elevation  
14 under article 13 – it is considered a drying reef under article 47 and part of Mauritius’  
15 lawfully adopted and internationally recognized archipelagic baselines, from which  
16 the same basepoints are generated. On either approach, Blenheim Reef must be  
17 taken into account in constructing the provisional equidistance line in stage one of  
18 the three-stage process. After I and Professor Sands have addressed stage one,  
19 Mr Reichhold will take you through stages two and three of the three-stage process,  
20 and show you that the equidistance line produced at stage one, under both of our  
21 approaches, constitutes the equitable solution that UNCLOS and the case law,  
22 including ITLOS’s own cases, require, and that the Special Chamber in this case  
23 should adopt as the boundary within 200 Miles.

24  
25 In stage one, we begin by confirming that Blenheim Reef is a low-tide elevation  
26 located within 12 Miles of Mauritius’ coast. The relevant geographical facts are  
27 indisputable: (1) Blenheim Reef is a low-tide elevation, and (2) it is situated within  
28 12 Miles of Mauritius’ territorial sea.

29  
30 The geographic and cartographic evidence leave no doubt about either point. First,  
31 they show that, in fact and in law, Blenheim Reef is a low-tide elevation. To quote  
32 article 13, it is “a naturally formed area of land which is surrounded by and above  
33 water at low tide but submerged at high tide.”<sup>3</sup> This is reflected in the official nautical  
34 charts of various States, including the official charts of the United Kingdom, the  
35 United States, India and Russia. They all depict Blenheim Reef as a low-tide  
36 elevation, a single mass of submerged land, some of which is above water at low  
37 tide.

38  
39 On your screens you see the depiction of Blenheim Reef on BA chart 727, published  
40 in 2004 and updated in 2017, as presented in Figure 2.5 of Mauritius’ Memorial.  
41 Maldives accepts the accuracy of this chart.<sup>4</sup>

42  
43 The hydrographic evidence shows that Blenheim Reef is shaped like the rim of a  
44 volcanic mountain rising from the sea floor. The rim is extensive, with a perimeter  
45 exceeding 27 kilometers, much of which is above sea level, except at high tide. The  
46 exposed rim surrounds a large lagoon, comprising more than 36 square kilometers,  
47 and punctuated by coral reefs, some of which are also exposed at low tide, as shown

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<sup>3</sup> United Nations Convention on the Law of the Sea 1982, article 13(1).

<sup>4</sup> See Counter-Memorial of the Republic of Maldives, para. 128, and p. 71, table 2.

1 on this extract from BA 727. You can also see the size and shape of Blenheim Reef,  
2 including its enclosed lagoon, on the satellite image now on your screens. It is a  
3 sizeable feature, extending for 9.6 kilometers from south to north, and 4.7 kilometers  
4 from west to east, with extensive portions above water at low tide.

5  
6 The undisputed evidence further establishes that part of Blenheim Reef is situated  
7 within 12 Miles of the territorial sea of Takamaka Island, which is indisputably part of  
8 Mauritius' relevant coast for delimiting the maritime boundary with Maldives. As you  
9 can see from this excerpt of BA 727, the distance between Takamaka Island and the  
10 south-western part of Blenheim Reef is approximately 10.6 Miles. Thus, more than a  
11 Mile of the reef is located within Mauritius' territorial sea. This is not challenged in  
12 Maldives' Counter-Memorial. It follows, in accordance with article 13, that Blenheim  
13 Reef is a low-tide elevation which "may be used as the baseline for measuring the  
14 breadth of the territorial sea."<sup>5</sup>

15  
16 Article 5 of the Convention tells us how to determine the precise location of that  
17 baseline.

18  
19       Except where otherwise provided in this Convention, the normal baseline  
20       for measuring the breadth of the territorial sea is the low-water line along  
21       the coast as marked on large-scale charts officially recognized by the  
22       coastal State.<sup>6</sup>

23  
24 The large-scale chart that Mauritius has long officially recognized for this part of the  
25 Chagos Archipelago is the one you have just seen, BA 727.

26  
27 Here, you can see more clearly, in red, the low-water line on Blenheim Reef's  
28 northern coast, which directly faces Maldives and the area to be delimited. And you  
29 can also see the rest of Mauritius' relevant coast, on the north-facing coasts of Peros  
30 Banhos Atoll and Salomon Islands Atoll.

31  
32 Maldives accepts this depiction of Mauritius' relevant coast, with one exception. It  
33 wishes to exclude Blenheim Reef from Mauritius' relevant coast by arguing that only  
34 land territory, including islands, may comprise a State's relevant coast but never a  
35 low-tide elevation.<sup>7</sup> There is no support for this, not in UNCLOS or in the case law. In  
36 fact, the case law expressly rejects Maldives' theory. Ironically, the leading case is  
37 the one they cite, albeit for other purposes: *Qatar v. Bahrain*. In a passage that  
38 Maldives avoided, the judgment confirms that a low-tide elevation, situated wholly or  
39 partly within a State's territorial sea "forms part of the coastal configuration"<sup>8</sup> of that  
40 State. The Court explained that

41  
42       the question whether low-tide elevations are territory and can be  
43       appropriated [is distinct from *the question*] *whether low-tide elevations are*  
44       *or are not part of the geographical configuration and as such may*  
45       *determine the legal coastline. The relevant rules of the law of the sea*

---

<sup>5</sup> United Nations Convention for the Law of the Sea 1982, art. 13, para. 1.

<sup>6</sup> *Ibid.*, art. 5.

<sup>7</sup> Counter-Memorial of the Republic of Maldives, paras. 127-130; Rejoinder of the Republic of Maldives, paras. 30, 35, 39, 43.

<sup>8</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, para. 202.



1 explicitly attribute to them that function when they are within a State's  
2 territorial sea.<sup>9</sup>

3  
4 This makes clear that a low-tide elevation like Blenheim Reef, within a State's  
5 territorial sea, is part of the geographical configuration that determines the State's  
6 legal coastline.

7  
8 Once the Parties' relevant coasts are identified, the next step, as the ICJ held in the  
9 *Black Sea* case, is for the equidistance line

10  
11 to be constructed from the most appropriate points on the coasts of the two  
12 States concerned, with particular attention being paid to those *protuberant*  
13 *coastal points situated nearest to the area to [be] delimited*.<sup>10</sup>

14  
15 In *Peru v. Chile*, the Court explained that, following this rule, the

16  
17 base points for the construction of the provisional equidistance line have  
18 been selected as the most seaward coastal points "situated nearest to the  
19 area to be delimited".<sup>11</sup>

20  
21 For Mauritius, it is indisputable that, objectively, and as a matter of coastal  
22 geography, its "most seaward coastal points 'situated nearest to the area to be  
23 delimited'" include the coastal points on the low-water line of Blenheim Reef.

24  
25 The drawing of the equidistance line is not a work of art. It is, as you know, a matter  
26 of science. This is an "objective" exercise which should "require no subjectivity or  
27 discretion at all".<sup>12</sup> As the ICJ explained in the *Black Sea* case, "the line is plotted on  
28 strictly geometrical criteria on the basis of objective data."<sup>13</sup>

29  
30 The established method for plotting the provisional equidistance line on strictly  
31 geometrical criteria and objective data is by using CARIS software. This software  
32 identifies basepoints along each Party's relevant coast and mathematically  
33 constructs from them the equidistance line.

34  
35 As you can see on this slide, the software identified 13 basepoints along Mauritius'  
36 relevant coast. These include three basepoints on Île Diamant, six on Île de la Passe  
37 and four basepoints, numbers 10 through 13, at Blenheim Reef, which are magnified  
38 in the inset on the right side of this slide. Along Maldives' coast, the software  
39 identified 39 basepoints that control an equidistance line within 200 Miles, and  
40 Mauritius does not challenge them.

41  
42 Taking account of basepoints identified by the CARIS software, this is the  
43 equidistance line that the objective application of the software produces. In Mauritius'

---

<sup>9</sup> *Ibid.*, para. 204, emphasis added.

<sup>10</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 117.

<sup>11</sup> *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 3, para. 185.

<sup>12</sup> Stephen Fietta & Robin Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (OUP 2016), p. 576.

<sup>13</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 118.

1 view, this is the provisional equidistance line for stage one, objectively and  
2 mathematically constructed.

3  
4 But Maldives does not accept this line as the stage one provisional equidistance line  
5 and seeks to disregard Blenheim Reef entirely.

6  
7 Maldives offers three arguments to disregard the basepoints at Blenheim Reef. None  
8 is defensible in geography. None has support in the Convention or the case law.  
9 There is no justification for disregarding Blenheim Reef in constructing the  
10 provisional equidistance line. Let us recall the ICJ's injunction in the *Black Sea* case  
11 that:

12  
13 [a]t this initial stage of the construction of the provisional equidistance line  
14 the Court is not yet concerned with any relevant circumstances that may  
15 obtain and the line is plotted on strictly geometrical criteria on the basis of  
16 objective data.<sup>14</sup>

17  
18 ITLOS confirmed this in *Bangladesh v. Myanmar*, holding that:

19  
20 [a]t this stage, the judge pays no heed to any relevant circumstances and the  
21 line is drawn in accordance with strictly geometric criteria on the basis of  
22 objective data.<sup>15</sup>

23  
24 Indeed, as far back as 1993, Professor Bowett observed, based on his study of the  
25 jurisprudence and State practice, that the objective data upon which the equidistance  
26 line is drawn, on the basis of geometric criteria, include low-tide elevations that form  
27 an integral part of a State's coast:

28  
29 As regards their use simply as base points, islands have no special status,  
30 and they need to be considered *together* with rocks, reefs and low-tide  
31 elevations. In general, all of these features will be valid for use as  
32 basepoints, in conjunction with the equidistance method, where they can  
33 be regarded as forming an integral part of the coast.<sup>16</sup>

34  
35 That description includes Blenheim Reef, because it is, under articles 13 and 5 the  
36 Convention, indisputably an integral part of Mauritius' coast.

37  
38 Maldives' first argument for excluding Blenheim Reef is that it is not *wholly* within  
39 12 Miles of any Mauritian mainland or island territory.<sup>17</sup>

40  
41 This argument conflicts with the Convention. Article 13 makes this clear:

42  
43 Where a low-tide elevation is situated wholly or partly at a distance not  
44 exceeding the breadth of the territorial sea from the mainland or an island,

---

<sup>14</sup> *Ibid.*

<sup>15</sup> *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 92.

<sup>16</sup> 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.

<sup>17</sup> Rejoinder of the Republic of Maldives, para. 64.

1 the low-water line on that elevation may be used as the baseline for  
2 measuring the breadth of the territorial sea.<sup>18</sup>

3  
4 “Wholly or partly” means what it says.

5  
6 Blenheim Reef is partly situated within 12 Miles of Takamaka Island. Therefore,  
7 basepoints may be placed on the low-water line on this elevation, which abuts the  
8 delimitation area, even if part of this feature is located beyond 12 Miles from that  
9 island. Article 13 thus defeats Maldives’ first argument.

10  
11 This also answers the Tribunal’s question 3, part 2, whether article 13, paragraph 1,  
12 second sentence, permits the use of basepoints on Blenheim Reef that are beyond  
13 12 Miles from Takamaka Island. The answer is: “Yes.” Article 13 tells us “the low-  
14 water line on that elevation may be used as the baseline for measuring the breadth  
15 of the territorial sea,” and article 5 tells us that baseline “is the low-water line along  
16 the coast”. There is nothing in either article, or the rest of the Convention, or the case  
17 law, that limits the placement of coastal basepoints to parts of the coast that are  
18 within 12 Miles of another feature, in this case, Takamaka Island. It would be  
19 especially inappropriate to invent such a rule for this case, where Blenheim Reef is a  
20 single consolidated feature, parts of which expose at low tide. There is no  
21 justification, in law or geography, for treating as its coastline, or placing basepoints  
22 only on, exposed patches within 12 Miles of Takamaka Island, when these patches  
23 lie far away and do not face the area to be delimited, and appear and disappear  
24 depending on the tides.

25  
26 And this brings me to Maldives’ second argument, namely that “Blenheim Reef is not  
27 a single LTE [but] comprises 57 LTEs, with large gaps between some of them.”<sup>19</sup>  
28 This argument is even more far-fetched and only appeared in the Rejoinder. So this  
29 is the first opportunity for us to address it.

30  
31 Maldives offers absolutely no scientific or technical evidence to support this rather  
32 stunning assertion. No hydrographer, geographer or cartographer or other technical  
33 expert is offered to endorse it. Strangely, the only reference identified by Maldives for  
34 its contention is the geodetic survey conducted by Mauritius during its visit to  
35 Blenheim Reef in February 2022, which is annexed to its Reply.<sup>20</sup> But that survey  
36 provides no support whatsoever for Maldives’ argument. To the contrary, it makes  
37 clear that Blenheim Reef is a single feature, parts of which are exposed at low tide.

38  
39 Maldives does not explain how it determined, from this survey, that Blenheim Reef is  
40 57 separate maritime features. The best we can discern is that they took from  
41 Mauritius’ report this map, drawn from satellite imagery, which identified the parts of  
42 Blenheim Reef above water when the image was taken, and then determined that  
43 there were 57 locations to be treated as separate low-tide elevations.

44  
45 This conclusion is unscientific and unsupportable, as a matter of geography,  
46 hydrography and cartography. There is equally no legal support in UNCLOS or the

---

<sup>18</sup> United Nations Convention on the Law of the Sea 1982, art. 13, para. 1.

<sup>19</sup> Rejoinder of the Republic of Maldives, para. 64.

<sup>20</sup> Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022 (Reply of the Republic of Mauritius, Vol. III, Annex 1).

1 case law for the claim that each drying patch on a low-tide elevation is to be treated  
2 as a separate maritime feature.

3  
4 Maybe on Thursday Maldives will explain this approach, after which we can respond.  
5 In the meantime, let me make a number of points. First, nautical charts of Blenheim  
6 Reef depict it as a single, consolidated maritime feature. You have already seen this  
7 on BA 727, which serves as Mauritius' official large-scale chart. Here is an earlier BA  
8 chart, 003, from 1998, updated in 2017.<sup>21</sup> This is Blenheim Reef as depicted on  
9 India's Hydrographic Office Chart 269, from 2005, again, as a single, consolidated  
10 maritime feature.<sup>22</sup> Russia, too, has depicted Blenheim Reef in the same manner, on  
11 chart 41286, from 1964, corrected in 2017.<sup>23</sup> Here is the United States' NIMA chart  
12 61610, last updated in 1997. It, too, shows Blenheim Reef as a single low-tide  
13 elevation.<sup>24</sup>

14  
15 Blenheim Reef's status as a single maritime feature is further confirmed by satellite  
16 imagery, including, as shown on your screens, these images taken in January, April  
17 and December of 2021.

18  
19 As would be expected, the reef's height above the sea floor is not uniform all around  
20 the perimeter. Therefore, at different tide levels, different parts of the reef are  
21 exposed. The photographic depiction of 57 separate maritime features is merely the  
22 number of exposed parts of the same feature at a particular point in time. It is  
23 meaningless. Another photograph taken an hour later might show a different  
24 number, less or more. And the photograph relied on by Maldives was not taken at  
25 lowest astronomical tide, at which point five or six uncovered areas separated by  
26 water on this photograph, or 10 or 20, might be seen as connected to one another.

27  
28 Mr President, the number of maritime features at Blenheim Reef does not change by  
29 the hour, depending on rising or falling tides. What changes with the tides is the  
30 extent of the single feature that is uncovered at a particular moment in time. At all  
31 times, in our submission, Blenheim Reef is a single low-tide elevation. We do not see  
32 how this Special Chamber could adopt a rule that the number of low-tide elevations  
33 under the State's jurisdiction at a single location may change by the hour, increasing  
34 or decreasing with the tides.

35  
36 This is certainly not the approach that the distinguished Annex VII tribunal took in the  
37 *South China Sea* arbitration. For example, it described Second Thomas Shoal as "a  
38 low-tide elevation" even though it had multiple "rocks that are almost certain to be  
39 visible at low water".<sup>25</sup> Likewise, the Tribunal characterized Mischief Reef as "a low-  
40 tide elevation", with "drying rocks" and "rocks exposed during half-tide."<sup>26</sup> Each of  
41 these features was thus regarded as a single low-tide elevation, no matter how many  
42 parts were exposed at a given time.

21 British Admiralty Chart 003 (published 5 March 1998, updated 10 August 2017).

22 Indian Hydrographic Office Chart 269 (30 September 1992, updated 2015).

23 Russian Nautical Chart 41286 (published 12 December 1964, updated 24 June 2017).

24 NIMA Chart 61610 (7<sup>th</sup> Edition, 20 September 1997).

25 *The South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award, 12 July 2016, paras. 379-381.

26 *Ibid.*, paras. 377-378.

1 Mr President, I thank you for your patience. This would be a good opportunity to take  
2 a break and after the break I will address the third argument advanced by Maldives  
3 with respect to Blenheim Reef.

4  
5 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Parkhomenko. We  
6 have reached 11.30 so we will take a break for half an hour. Thank you.

7  
8 (Break)  
9

10 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I now give the floor to  
11 Mr Parkhomenko to continue his statement. You have the floor, Sir.

12  
13 **MR PARKHOMENKO:** I now turn to Maldives' third argument. The Maldives' third  
14 argument for disregarding basepoints at Blenheim Reef is the blanket assertion that,  
15 as a matter of law, low-tide elevations can never be taken into account in delimiting a  
16 maritime boundary. In their words: "The relevant jurisprudence consistently rejects  
17 LTEs as locations for basepoints."

18  
19 Here again, I am afraid, Maldives has failed to support their argument. First, there is  
20 nothing in UNCLOS or the case law requiring international courts and tribunals, in all  
21 cases, to disregard low-tide elevations in constructing a provisional equidistance line.

22  
23 Nor, to be fair, is there an absolute rule that requires courts or tribunals to take low-  
24 tide elevations into account in every maritime delimitation. Rather, as the case law  
25 makes clear, it all depends on the geographic circumstances of a particular case,  
26 and whether giving effect to a low-tide elevation in those circumstances contributes  
27 to, or detracts from, the equitable solution that international law requires.

28  
29 Maldives relies on three cases – two ICJ judgments and one Annex VII arbitral  
30 tribunal – to prop up its argument that, regardless of the geographic circumstances,  
31 a low-tide elevation may never be taken into account in drawing a maritime  
32 boundary. However, none of those cases supports their assertion. None of those  
33 cases refers to, or even suggests, the existence of such a rule. To the contrary, in  
34 every case the treatment given to particular low-tide elevations, or similar maritime  
35 features, depended on the specific geographical circumstances in that case, and  
36 whether giving effect to the maritime feature contributed to, or detracted from, the  
37 achievement of an equitable solution.

38  
39 We begin with *Qatar v. Bahrain*. In that case, the ICJ was called upon to delimit the  
40 territorial sea boundary in a geographic context involving certain low-tide elevations  
41 within 12 Miles of both States. The unique situation here, as shown on this map, was  
42 that these LTEs, Fasht ad Dibal and Fasht al Azm, were situated precisely in the  
43 area where the territorial seas of Qatar and Bahrain overlapped. This is shown by  
44 the dotted red lines representing the 12-Mile limit from Qatar on the left and the  
45 12-Mile limit from Bahrain on the right.

46  
47 As the Court explained:

48  
49 When a low-tide elevation is situated in the overlapping area of the  
50 territorial sea of two States, whether with opposite or with adjacent coasts,

1 both States in principle are entitled to use its low-water line for the  
2 measuring of the breadth of their territorial sea. The same low-tide elevation  
3 then forms part of the coastal configuration of the two States.  
4

5 But, in the unique circumstances of this case,

6  
7 there is no ground for recognizing the right of Bahrain to use as a baseline  
8 the low-water line of those low-tide elevations which are situated in the  
9 zone of overlapping claims, or for recognizing Qatar as having such a right.  
10 [Accordingly], for the purposes of drawing the equidistance line, such low-  
11 tide elevations must be disregarded.  
12

13 As the Court further explained:

14  
15 For delimitation purposes the competing rights derived by both coastal States  
16 from the relevant provisions of the law of the sea would by necessity seem to  
17 neutralize each other.  
18

19 The judgment is clear: the Court ruled that States are entitled to treat low-tide  
20 elevations as integral parts of their relevant coasts, but where the two States attempt  
21 to place basepoints on the same LTEs situated within 12 Miles of both of them, the  
22 Court will disregard those features because they are located in the area of  
23 overlapping entitlements of both States. The Court did not rule that no delimitation  
24 right could derive from such features. To the contrary, its ruling confirms that such  
25 rights could emanate from low-tide elevations, as part of a State's "coastal  
26 configuration" in other circumstances. *Qatar v. Bahrain* is thus distinguishable on the  
27 facts, but to the extent it is relevant here it supports Mauritius' argument, not  
28 Maldives'.  
29

30 Nor can Maldives derive any support from *Bangladesh v. India*. Maldives attempts to  
31 make much of the fact that the Annex VII tribunal chose to disregard a feature within  
32 12 Miles of both States' coastlines that Bangladesh called "South Talpatty" and India  
33 called "New Moore." But this is easy to explain. During the Tribunal's site visit to the  
34 area, it could not find at this location any feature above water, even at low tide.  
35

36 As the Tribunal explained in its award, "it was not apparent whether the feature was  
37 permanently submerged or constituted a low-tide elevation." In these geographic  
38 circumstances, the Tribunal sensibly decided, for delimitation purposes, that "[i]f  
39 alternative base points situated on the coastline of the parties are available, they  
40 should be preferred to base points located on low-tide elevations". In other words, it  
41 is possible, depending on the circumstances, to place basepoints on an LTE.  
42

43 There is thus nothing in this award to assist Maldives. The geographic circumstances  
44 are entirely different. Blenheim Reef exists and under articles 13 and 47 of the  
45 Convention can be used as a place for basepoints. The reasons the Annex VII  
46 Tribunal gave for not putting basepoints on South Talpatty/New Moore are not  
47 present here. There is thus no need to prefer any "alternative" basepoints elsewhere  
48 along Mauritius' coast.  
49

50 I turn now to *Somalia v. Kenya*, the third and final case that Maldives invoked in  
51 support of its argument that, as a matter of international law, low-tide elevations must

1 never be given basepoints in maritime delimitation. Like the other two cases,  
2 *Somalia v. Kenya* does not support this argument.

3  
4 There is nothing in this case that says or suggests that basepoints may not be  
5 placed on low-tide elevations for delimitation purposes. The general rule, articulated  
6 by the Court, is that

7  
8 delimitation methodology is based on the geography of the coasts of the  
9 two States concerned, and that a median or equidistance line is constructed  
10 using base points appropriate to that geography.

11  
12 Basepoints on small maritime features – not only low-tide elevations but also  
13 islands – may be deemed appropriate or inappropriate, depending on whether or not  
14 they have a “disproportionate effect” on the construction of the equidistance line to  
15 the prejudice of one of the Parties.

16  
17 As the Court recalled, it “has sometimes been led to eliminate the disproportionate  
18 effect of small islands,” by not selecting a basepoint on such small maritime features.  
19 As the Court has stated in the past, there may be situations in which

20  
21 the equitableness of an equidistance line depends on whether the  
22 precaution is taken of eliminating the disproportionate effect of certain  
23 “islets, rocks and minor coastal projections.”

24  
25 These were the principles that guided the Court in *Somalia v. Kenya*, as is further  
26 evident from these passages in the judgment:

27  
28 The first two base points that Somalia proposes on its side of the land  
29 boundary terminus are located on the Diua Damasciaca islets. They have  
30 a significant effect on the course of the median line in the territorial sea,  
31 pushing it to the south. Somalia’s third base point, off the southern tip of  
32 Ras Kaambooni, also has the effect of significantly pushing the course of  
33 the median line to the south. The placement of base points on the tiny  
34 maritime features described above has an effect on the course of the  
35 median line that is disproportionate to their size and significance to the  
36 overall coastal geography.

37  
38 Accordingly:

39  
40 In the circumstances of the present case, the Court ... does not consider it  
41 appropriate to place base points on the tiny arid Diua Damasciaca islets,  
42 which would have a disproportionate impact on the course of the median  
43 line in comparison to the size of these features. For similar reasons, the  
44 Court does not consider it appropriate to select a base point on a low-tide  
45 elevation off the southern tip of Ras Kaambooni.

46  
47 Two conclusions can be drawn for purposes of the present proceedings. First, there  
48 is no special rule for low-tide elevations. Just as Professor Bowett wrote, they are to  
49 be treated no differently than “islets, rocks and minor coastal projections.” Second,  
50 the appropriateness of using basepoints for delimitation purposes on such features  
51 will depend on whether, in the geographic circumstances of a particular case, the  
52 basepoints will have a disproportionate effect, relative to their size and significance,

1 on the construction of the equidistance line, rendering the delimitation inequitable to  
2 the other party. Conversely, when the effect of the basepoints is neither  
3 disproportionate nor inequitable, there is no reason not to use them for delimitation  
4 purposes.

5  
6 The justification for the Court's distinction in *Somalia v. Kenya* between small  
7 maritime features that have a prejudicial effect and those that do not is apparent  
8 from this chart. Here, you can see that the features discounted by the Court,  
9 especially the small Somali islands, would have deflected the equidistance line to the  
10 south by as much as 52 degrees, causing it to run almost parallel to Kenya's coast,  
11 thus causing a cut-off effect and distributing a disproportionate share of the territorial  
12 sea to Somalia. It is also important to appreciate that this case, like *Bangladesh v.*  
13 *India*, was between two adjacent States, where small coastal features close to the  
14 land boundary terminus are more likely to have a pronounced effect on the course of  
15 the equidistance line. The disproportionate effects of such features, as between  
16 adjacent States, was demonstrated as far back as the *North Sea* cases, in this  
17 familiar diagram by Professor Jaenicke of Germany.

18  
19 The diagram shows the effects of a small coastal headland on the equidistance line  
20 between two adjacent States. We have highlighted in blue the equidistance line  
21 drawn by Professor Jaenicke in the absence of this feature. The various dashed  
22 lines show how State A's headland, depending on its size, can affect the  
23 equidistance line and cause the corresponding prejudice to adjacent State B.

24  
25 The same effects of small coastal features on delimitation between adjacent States  
26 in the territorial sea are more easily discernible here. State A's small coastal feature  
27 could be a headland, as depicted by Professor Jaenicke, or a rock or small island, or  
28 a low-tide elevation, as depicted here. In all cases, the effect would be the same: to  
29 push the equidistance line significantly across the coastal front of adjacent State B,  
30 to that State's prejudice.

31  
32 But note how different the effect is when State A and State B are opposite one  
33 another rather than adjacent. To be sure, State A's low-tide elevation (or islet or  
34 headland) would have an effect on the equidistance line, but it is an extremely  
35 modest one, and not out of proportion to the significance of the feature causing this  
36 effect. This chart, as you will now see, closely resembles the geographic situation  
37 between Mauritius and Maldives.

38  
39 This map shows the actual impact of Blenheim Reef on the equidistance line  
40 between Mauritius and Maldives. What it shows is that Blenheim Reef does not even  
41 begin to affect the equidistance line until a point that is 145 Miles from the Parties'  
42 coasts. Even then, its impact is not felt on the entire equidistance line but only a  
43 segment of it; and along that segment, it pushes the line slightly to the north by no  
44 more than 11 Miles at its maximum reach, adding to Mauritius' side of the boundary  
45 only about 4,690 square kilometres, which is less than 5 per cent of the entire area  
46 to be delimited. There is no cut-off of Maldives' maritime projections. There is no  
47 inequity to Maldives. As you will see later, when Mr Reichhold comes to the podium  
48 to address stages two and three, the equidistance line that results from taking  
49 Blenheim Reef into account equitably distributes the overlapping area between



1 Mauritius and Maldives and easily passes the disproportionality test. In fact, the  
2 delimitation is almost perfectly proportionate.

3  
4 Before we get to stages two and three, however, I would like to respond to Maldives'  
5 assertion that there is no case "in which a provisional equidistance line in respect of  
6 overlapping EEZ and continental shelf claims has been drawn by situating a  
7 basepoint on an LTE." In fact, there is such a case, and it is cited in Maldives'  
8 Rejoinder.

9  
10 This is the *Violations* case between Nicaragua and Colombia that the ICJ decided  
11 last April. This case was mainly about Nicaragua's claims that Colombia had violated  
12 its sovereign rights in its EEZ and continental shelf, as declared by the Court in its  
13 2012 judgment in the *Territorial and Maritime Dispute* case. In the *Violations* case,  
14 the Court sustained Nicaragua's claims in all respects. The part of the case that  
15 Maldives mentions concerns Colombia's counterclaim challenging the lawfulness of  
16 Nicaragua's straight baselines.

17  
18 On this issue, the Court ruled for Colombia, rejecting Nicaragua's contention that it  
19 could place a basepoint on Edinburgh Reef for purposes of its straight baseline  
20 claim. Maldives quotes this portion of the Court's judgment:

21  
22 [T]he issue of determining the baseline for the purpose of measuring the  
23 breadth of the continental shelf and the exclusive economic zone and the  
24 issue of identifying base points for drawing an equidistance/median line for  
25 the purpose of delimiting the continental shelf and the exclusive economic  
26 zone between adjacent/opposite States are two different issues.<sup>27</sup>

27  
28 To which we respond: "Exactly." This is, indeed, the teaching of the *Violations* case.  
29 In that case, as Maldives told you, the Court would not allow Nicaragua to place a  
30 basepoint on Edinburgh Reef for purposes of its straight baseline claim because  
31 Nicaragua had not proved that the feature was above water at high tide. But what  
32 Maldives did not tell you is that, in its 2012 judgment, the Court placed a basepoint  
33 on the same low-tide elevation for delimitation purposes and used it to construct the  
34 provisional equidistance line between Nicaragua and Colombia.

35  
36 Here is the Court's own map from its 2012 judgment showing the basepoints –  
37 including on Edinburgh Reef – that it used in constructing the provisional  
38 equidistance line. The Court recalled this in the *Violations* case:

39  
40 [I]n plotting a provisional equidistance line, the 2012 Judgment refers to  
41 "Edinburgh Reef" as part of the islands located off the coast of Nicaragua  
42 and that ... *the Court placed a base point on this feature for the construction*  
43 *of the provisional equidistance line.*<sup>28</sup>

44  
45 This was conspicuously omitted from the Maldives' discussion of the *Violations* case.  
46 I should add that, in the second stage of the three-stage process, the Court  
47 continued to treat Edinburgh Reef as an appropriate Nicaraguan basepoint and gave

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<sup>27</sup> Rejoinder of the Republic of Maldives, para. 45, citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, 21 April 2022, para. 250.

<sup>28</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, 21 April 2022, para. 250, emphasis added.

1 it and Nicaragua's other basepoints considerably more weight than Colombia's  
2 corresponding basepoints, resulting in a major adjustment of the provisional  
3 equidistance line in Nicaragua's favour.<sup>29</sup>

4  
5 Mr President, Members of the Special Chamber, in conclusion, there is no valid  
6 reason, in geography or in law, for declining to place basepoints on Blenheim Reef  
7 based on strictly objective, mathematical criteria, as the CARIS software does, in  
8 constructing a provisional equidistance line in stage one of the three-stage process.

9  
10 As a matter of law, under articles 13 and 5 of UNCLOS, Blenheim Reef is an integral  
11 part of Mauritius' relevant coastline, and it is situated within 10.6 Miles of another  
12 integral part of Mauritius' relevant coast, Takamaka Island. There is no valid reason  
13 for disregarding or discounting it in the specific geographical circumstances in this  
14 case in the first stage of the three-stage process.

15  
16 Stage one thus concludes with the drawing of this provisional equidistance line which  
17 takes into account all of the basepoints generated by the CARIS software on the  
18 relevant coasts of Mauritius and Maldives, including the four basepoints at Blenheim  
19 Reef.

20  
21 Mr President, Members of the Special Chamber, this concludes my presentation.  
22 I thank you for your patient attention and kindly ask you to invite to the podium  
23 Professor Sands.

24  
25 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Parkhomenko.

26  
27 I now give the floor to Mr Sands. Mr Sands, I inform you in advance that this  
28 morning's session will be adjourned around 1.10, at the latest, given the time we  
29 spent for introductions. Therefore, if you will not be able to finish your statement  
30 within this time, you may, of course, continue your statement this afternoon. You  
31 have the floor.

32  
33 **MR SANDS:** Thank you, Mr President. I am planning to finish by 1.10, but because  
34 of the questions that were posed which we only received yesterday at 4 p.m., I may  
35 ask your indulgence for a couple of minutes to just beyond, but I hope I do not need  
36 to do that.

37  
38 Mr President, Members of the Special Chamber, following Mr Parkhomenko's  
39 presentation I am going to address you on Mauritius' entitlement to maritime spaces  
40 within 200 Miles, based on its archipelagic baselines, pursuant to Part IV of the  
41 Convention.

42  
43 In its Counter-Memorial, Maldives stated that Blenheim Reef is the "central dispute  
44 dividing the Parties" in this case.<sup>1</sup> Of the 52 basepoints proposed by the Parties in  
45 the first round of written pleadings, 39 located along the southern coast of Addu Atoll  
46 in Maldives and nine along the northern coastline of the Chagos Archipelago, are

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<sup>29</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para. 234.

<sup>1</sup> Maldives' Counter-Memorial, para. 114.

1 fully agreed. Only four basepoints are in dispute: Mauritius' points 10, 11, 12 and 13  
2 on the northern fringe of Blenheim Reef.

3  
4 Mr Parkhomenko has demonstrated why – having regard to article 13 of the  
5 Convention, in conjunction with article 5 – Blenheim Reef as a low-tide elevation is to  
6 be treated as part of Mauritius's regular coast, upon which these basepoints may be  
7 placed to construct the provisional equidistance line. I am now going to address the  
8 second legal basis for the line of delimitation proposed by Mauritius, one based on  
9 the use of archipelagic baselines in relation to Blenheim Reef, pursuant to Part IV of  
10 the Convention.

11  
12 Mauritius' entitlement based on its archipelagic baselines is not a theory in the  
13 alternative, as contended by Maldives.<sup>2</sup> As an archipelagic State, Mauritius has the  
14 right to use archipelagic baselines based on Part IV, and for Blenheim Reef – as a  
15 “drying reef” – it generates a full entitlement in the delimitation. As I noted earlier,  
16 there is a cardinal distinction with regard to the entitlements that may be generated  
17 by a low-tide elevation, on the one hand, and an archipelagic “drying reef”, on the  
18 other: although every “drying reef” may also be characterized as a low-tide elevation,  
19 not every low-tide elevation is a “drying reef” within the meaning of article 47.

20  
21 Blenheim Reef falls into the first category: it is both a low-tide elevation for the  
22 purposes of article 13 of the Convention and a drying reef within the meaning of  
23 article 47. On either approach – article 13 or article 47 – you get to the same  
24 equidistance line between Mauritius and Maldives.

25  
26 Before turning to Part IV of the Convention and the legal effect of Mauritius'  
27 archipelagic baselines, I will just briefly mention two factual disagreements to be  
28 addressed.

29  
30 First, Maldives argues that the geodetic survey of Blenheim Reef “merely confirms  
31 what was already common ground between the Parties – namely that there are LTEs  
32 at Blenheim Reef within the meaning of article 13 of UNCLOS.”<sup>3</sup> Mr Parkhomenko  
33 has already fully addressed this matter and explained why Blenheim Reef as an LTE  
34 is properly to be treated as a single feature. The same approach allows Mauritius to  
35 make full use of archipelagic baselines on the basis of the drying reef, that is  
36 Blenheim Reef, a single feature. Under article 47, the salami-slicing approach of the  
37 Maldives is simply irrelevant.

38  
39 The second factual disagreement concerning Blenheim Reef is Maldives' assertion  
40 that the findings of the on-site survey are “irrelevant to the issue regarding  
41 basepoints”.<sup>4</sup> Mr President, earlier I explained why the survey was significant in  
42 relation to the extent of drying reefs, and I will not repeat myself now.

43  
44 In the Memorial, relying on charts produced by the U.S. National Imagery and  
45 Mapping Agency (NIMA) and the French Naval Hydrographic and Oceanographic  
46 Service (SHOM), Mauritius characterized Blenheim Reef as “a large area of reef

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<sup>2</sup> Maldives' Rejoinder, para. 55.

<sup>3</sup> Maldives' Rejoinder, para. 19, emphasis added.

<sup>4</sup> Maldives' Rejoinder, para. 5(a).

1 drying at low tide”.<sup>5</sup> Maldives apparently did not agree with this. In its Counter-  
2 Memorial it made no submissions on Blenheim Reef as a “drying reef” under Part IV  
3 of the Convention. There was no “common ground”. In its Reply it barely addressed  
4 the legal issues, and so we will have to wait until Thursday to see what Maldives has  
5 to say about these provisions of the Convention.  
6

7 Let me turn now to our submissions on Part IV of the Convention. As Mauritius  
8 described in its Reply, Part IV creates a distinct and special regime applicable only to  
9 “Archipelagic States”.<sup>6</sup> The application of Part IV to Blenheim Reef confirms the full  
10 entitlements that this feature generates in the context of delimitation of the Parties’  
11 overlapping maritime entitlements.  
12

13 Let us begin with a little history. Proposals relating to a “special regime” for  
14 archipelagos, for the purpose of delimiting territorial waters, may be traced back to  
15 the 1899 meeting of the Institut de Droit International, by coincidence held here in  
16 Hamburg.<sup>7</sup> Further preliminary studies were then carried out in 1924 and 1926 by the  
17 International Law Association and by the Institut, in 1927 and 1928, and by the  
18 American Institute of International Law, in 1925. There was also active consideration  
19 of archipelagos in the territorial sea in preparation for the 1930 Hague Codification  
20 Conference. But it was not until the independence of Indonesia and the Philippines  
21 that State practice truly began to emerge.<sup>8</sup>  
22

23 In 1951, the International Court was called upon by the United Kingdom to rule on  
24 the validity under international law of Norwegian baselines purporting to delimit a  
25 fisheries zone (that is the *Fisheries* case).<sup>9</sup> The coastal zone under consideration  
26 included the islands, islets, rocks and reefs known as “*skjærgaard*”. The Court noted  
27 that Norway and the United Kingdom agreed that “in the case of a low-tide elevation  
28 (drying rock) the outer edge at low water of this low-tide elevation may be taken into  
29 account as a basepoint for calculating the breadth of the ... sea.”<sup>10</sup>  
30

31 Turning to the delimitation of Norwegian territorial waters, the Court identified three  
32 methods. As to this second method – it was apparently the first time the ICJ was  
33 called upon to address an archipelagic matter – the Court held that where the coast  
34 is “bordered by an archipelago such as the ‘*skjærgaard*’ ... the base-line becomes  
35 independent of the low-water mark, and can only be determined by means of a  
36 geometrical construction.” In these circumstances, the Court continued, “the line of  
37 the low-water mark can no longer be put forward as a rule requiring the coastline to  
38 be followed in all its sinuosities.”<sup>11</sup>  
39

40 The Court held that baselines should “not depart to any appreciable extent from the  
41 general direction of the coast” but also that the coastal State “must be allowed the

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<sup>5</sup> Mauritius’ Memorial, para. 2.24.

<sup>6</sup> Mauritius’ Reply, paras. 2.20-2.52.

<sup>7</sup> H.P. Rajan, “The Legal Regime of Archipelagos”, *German Yearbook of International Law*, 29 (1986) p. 137.

<sup>8</sup> International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 23, available at [https://www.ila-hq.org/en\\_GB/documents/conference-report-sydney-2018-5](https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-5) (last accessed 15 October 2022).

<sup>9</sup> *Fisheries case, Judgment [of 18 December 1951], I.C.J. Reports 1951*, p. 116.

<sup>10</sup> *Ibid.*, p. 128.

<sup>11</sup> *Ibid.*, pp. 128-129.

1 latitude necessary in order to be able to adapt its delimitation to practical needs and  
2 local requirements”.<sup>12</sup>

3  
4 The Court ultimately concluded that Norway’s method of straight baselines, “imposed  
5 by the peculiar geography of the Norwegian coast” was not contrary to international  
6 law, even as it stood in 1951 before the adoption of the Convention.<sup>13</sup>

7  
8 The principles elucidated by the International Court in the *Fisheries* case have been  
9 very significant. They were carried forward to a large extent in the negotiation of  
10 what became Part IV of UNCLOS. During sessions of the Seabed Committee at the  
11 Third United Nations Conference on the Law of the Sea, Mauritius, Fiji, Indonesia  
12 and the Philippines introduced two ideas on principles applicable to archipelagic  
13 States.

14  
15 The first idea took forward the use of straight baselines to connect “the outermost  
16 points of the outermost islands and drying reefs of the archipelago from which the  
17 extent of the territorial sea of the archipelagic State is or may be determined.”<sup>14</sup>

18  
19 The second idea, which led to a proposal submitted by the United Kingdom,  
20 concerned the “[r]ights and obligations of archipelagic States”, setting out objective  
21 criteria to define archipelagic States by reference to, amongst other things, the  
22 maximum length of baselines and the “ratio of the area of sea to the area of land  
23 territory inside the perimeter”.<sup>15</sup>

24  
25 By 1976 there was agreement on the essence of these two ideas: the legal definition  
26 of an archipelagic State, and the right of such a State to construct straight baselines  
27 which could then be used for the purposes of determining their maritime  
28 entitlements, in relation not only to the territorial sea but, also, the EEZ, and the  
29 continental shelf, both up to and beyond 200 Miles. What emerged was a special  
30 regime for archipelagos in the Convention; one that related to “mid-ocean  
31 archipelagos”, as opposed to archipelagos associated with a continental State.  
32 Ultimately, it was these proposals that led to the adoption of Part IV, which is  
33 applicable and fully binding to this case.<sup>16</sup> That became indisputable after the site  
34 visit.

35  
36 Part IV of the Convention comprises nine articles, constituting a “distinctive  
37 regime”.<sup>17</sup>

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<sup>12</sup> *Ibid.*, p. 133.

<sup>13</sup> *Ibid.*, p. 139.

<sup>14</sup> UNGA, Official Records: Twenty-Eighth Session, Supplement No. 21 (A/9021), Report of the Committee on the Peaceful uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (1973), Volume V, A/AC.138/SC.II/L.15 of 14 March 1973, available at [https://digitallibrary.un.org/record/725198/files/A\\_9021%28Vol.V%29-EN.pdf](https://digitallibrary.un.org/record/725198/files/A_9021%28Vol.V%29-EN.pdf) (last accessed 15 October 2022).

<sup>15</sup> *Ibid.*, A/AC.138/SC.II/L.44 of 2 August 1973.

<sup>16</sup> International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 24.

<sup>17</sup> International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018), p. 24.

1 The terms “Archipelagic State” and “archipelago” are defined in the first provision of  
2 Part IV, article 46. For the purposes of the Convention, (a) an “archipelagic State”  
3 means “a State constituted wholly by one or more archipelagos and may include  
4 other islands”, and (b) an “archipelago” means

5  
6 a group of islands, including parts of islands, interconnecting waters and  
7 other natural features which are so closely interrelated that such islands,  
8 waters and other natural features form an intrinsic geographical, economic  
9 and political entity, or which historically have been regarded as such.

10  
11 Both Mauritius and Maldives have declared themselves to be “archipelagic State[s]”  
12 within the meaning of article 46. Mr President, what makes this case so interesting,  
13 indeed unique, is that this is the first time an international court or tribunal has been  
14 called upon to delimit the maritime boundary between two archipelagic States. In this  
15 way, the Special Chamber is called upon to interpret and apply, for the first time, the  
16 provisions of Part IV.

17  
18 Part IV applies to all “archipelagic States”, but it does not necessarily apply to all  
19 “archipelagos”. The provisions of Part IV only apply to archipelagos falling within the  
20 jurisdiction of coastal States which consist entirely of a group of islands. That plainly  
21 includes Mauritius. That point is not in dispute.

22  
23 On your screens, you can now see article 47, which allows an archipelagic State to  
24 draw straight baselines. As you can see, article 47, paragraph 1, allows Mauritius, as  
25 an archipelagic State, to “draw straight archipelagic baselines joining the outermost  
26 points of the outermost islands and drying reefs of the archipelago”. Indeed,  
27 article 47 is the only place in the Convention in which the words “drying reefs” are to  
28 be found, in paragraphs 1 and 7. The February survey confirmed that Blenheim Reef  
29 comprises a “drying reef”. Article 47, therefore, allows Mauritius to use the  
30 “outermost ... drying reefs” of Blenheim Reef to draw its archipelagic baselines. We  
31 can see no basis for a contrary view.

32  
33 To be able to draw straight baselines, an “archipelagic State” must meet six criteria  
34 arising under article 47. We explained this in our Reply, as you can see at  
35 paragraph 2.29. These criteria are as follows: the baselines must include the main  
36 islands; the ratio of water to land must be no more than 9 to 1; no segment of the line  
37 can be more than 125 Miles long; the baselines must not depart “to any appreciable  
38 extent from the general configuration of the archipelago”; baselines can be drawn  
39 from islands and drying reefs in all circumstances, and from low-tide elevations in  
40 limited circumstances; and the baselines must not cut off the territorial sea of any  
41 other State.

42  
43 Mauritius plainly meets all of these requirements, including in the area around  
44 Blenheim Reef. It has declared itself to be an archipelagic State within the meaning  
45 of article 46(a). It has given due publicity and deposited charts or lists of coordinates  
46 with the UN Secretary-General, as required by article 47, paragraph 9. It, and the  
47 Maldives, are among the 22 Parties to UNCLOS to have done so.<sup>18</sup> Of these Parties,

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<sup>18</sup> Antigua and Barbuda, Bahamas, Cabo Verde, Comoros, Dominican Republic, Fiji, Grenada, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius (with respect to Cargados Carajos

1 Mauritius and 15 others meet all the requirements of article 47. The Maldives,  
2 however, is one of six Parties that do not meet all the requirements of article 47. This  
3 is confirmed by a recent report of the ILA, published in 2018.<sup>19</sup>

4  
5 For its part, Maldives appears to accept that Mauritius meets all of the requirements  
6 for using archipelagic baselines, including the use of “drying reefs” at Blenheim,  
7 except for one criterion: the Maldives says that Mauritius has not met the fourth  
8 requirement – in accordance with article 47, paragraph 3 – namely the requirement  
9 that the “drawing of such [archipelagic] baselines shall not depart to any appreciable  
10 extent from the general configuration of the archipelago.”

11  
12 With the greatest respect, our friends from the Maldives are wrong.

13  
14 You can now see Mauritius’ archipelagic baselines on your screens. Maldives argues  
15 that these baselines do not meet the requirements of article 47, paragraph 3,  
16 because, as paragraph 66 of their Rejoinder puts it, they allegedly “depart to an  
17 appreciable extent from the general configuration of the ‘group of islands’ forming the  
18 Chagos Archipelago.”<sup>20</sup>

19  
20 To make this argument, Maldives has taken the actual language of article 47,  
21 paragraph 3, of the Convention, and then rewritten it by inserting additional words.  
22 That provision states, as you can see on the screen, that archipelagic “baselines  
23 shall not depart to any appreciable extent from the general configuration of the  
24 archipelago”. But Maldives has added extra words to 47, paragraph 3: it has  
25 introduced an additional requirement, a different requirement, namely that the  
26 baselines must not depart from the general configuration of the “group of islands”  
27 forming part of the archipelago.

28  
29 As you will see from the screens, the words “group of islands” do not appear  
30 anywhere in article 47, paragraph 3. They have just been added on by Maldives. Nor  
31 could those words appear: for the purposes of archipelagic baselines, article 47  
32 treats islands and drying reefs as coterminous.

33  
34 Mr President, there is no requirement for archipelagic baselines to encompass all the  
35 islands of an archipelago. What article 47, paragraph 1, says is only that the “main  
36 islands” may not be excluded. And in Mauritius’ case they have not been excluded.  
37 The Chagos Archipelago is made up of more than 60 islands, banks and reefs, with  
38 a total area of 52.07 square kilometres. Annex 4 to Mauritius’ Reply sets out a table  
39 of 56 high-tide features which are depicted on nautical charts available to  
40 Mauritius.<sup>21</sup> All the “main islands” are included within Mauritius’ archipelagic  
41 baselines.

42  
43 Yet the Maldives argues that Mauritius’ archipelagic baselines do not comply with  
44 article 47, paragraph 3, because of the supposed exclusion of Nelson’s Island, which

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and the Chagos Archipelago), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, São Tomé and Príncipe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu.

<sup>19</sup> See Appendix 3 to International Law Association, “Baselines under the International Law of the Sea: Final Report” (2018).

<sup>20</sup> Maldives’ Rejoinder, para. 66.

<sup>21</sup> Mauritius’ Reply, Vol. III, Annex 4.

1 you can see highlighted in a red circle on your screens, and the Great Chagos Bank.  
2 They say we have excluded it and we should have included it.

3  
4 Aside from Nelson's Island, Maldives has not identified any other island in the Great  
5 Chagos Bank that does not fall within Mauritius' archipelagic baselines. Maldives  
6 expressly recognizes that Nelson's Island is "the only high-tide feature of the Great  
7 Chagos Bank excluded from Mauritius' archipelagic baselines."<sup>22</sup>

8  
9 Let us look at Nelson's Island. It covers an area of just 0.32 square kilometres, or  
10 0.6 per cent of the total land area in the Chagos Archipelago. It is not a "main island".  
11 Unlike many of the larger islands in the Chagos Archipelago, there is no record of  
12 there ever having been any human habitation on Nelson's Island.

13  
14 In the Reply, Mauritius provided four concrete examples of recognized archipelagic  
15 States that exclude certain islands from their archipelagic baselines, and these are  
16 all significantly larger than Nelson's Island.<sup>23</sup> You can see these on your screens.

17  
18 First, on the top left-hand corner, Kiribati's archipelagic baselines exclude the island  
19 of Nikunau, which is 59 times larger than Nelson's Island. Second, on the top right,  
20 Papua New Guinea's archipelagic baselines exclude Wuvulu Island, which is  
21 45 times larger than Nelson's Island. Third, bottom left, Seychelles' archipelagic  
22 baselines omit Frégate Island, which is six times larger than Nelson's Island. Fourth,  
23 bottom right, Tuvalu's archipelagic baselines exclude Vaitupu Island, which is  
24 18 times larger than Nelson's Island.

25  
26 In all four of these examples, the U.S. Department of State's Bureau of Oceans and  
27 International Environmental and Scientific Affairs concluded that the archipelagic  
28 baselines do "not appear to depart to any appreciable extent from the general  
29 configuration of the archipelago."<sup>24</sup>

30  
31 You will note that the U.S. Department of State has – unlike Maldives – used the  
32 actual language of article 47, not the Maldives' modified version.

33  
34 All of the excluded islands in its studies are significantly larger than Nelson's Island.  
35 And, significantly, in the case of Nikunau Island and Vaitupu Island, they are located  
36 much further away from the nearest high-tide feature, departing to a far greater  
37 extent from the configuration of the archipelago.

38  
39 We put these examples into our Reply. We waited and hoped that Maldives might  
40 say something in its Rejoinder about these examples. What did it say? Nothing.  
41 Silence. It just accused Mauritius of "gloss[ing] over the specific geographical  
42 circumstances of the present case" because Nelson's Island is said to be "a high-tide  
43 feature and is therefore part of the intrinsic entity forming the Chagos Archipelago."<sup>25</sup>  
44

45 Again – it seems to be a habit – Maldives reads words into the Convention that are  
46 simply not there. Where do the words "intrinsic entity" appear in article 47? They do

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<sup>22</sup> Maldives' Rejoinder, para. 66(b).

<sup>23</sup> Mauritius' Reply, para. 2.41.

<sup>24</sup> Mauritius' Reply, Vol III, Annex 5, p. 5.

<sup>25</sup> Maldives' Rejoinder, para. 66(b).



1 not. The words “intrinsic geographical, economic and political entity”, which seem to  
2 have inspired Maldives, do appear but only in article 46(b). The problem for Maldives  
3 is that the words in that provision, rather obviously, have no relation whatsoever to  
4 the interpretation or application of the six objective criteria set out in article 47, where  
5 the words do not appear.  
6

7 To draw these threads together, Maldives appears to be the only State to have  
8 objected to Mauritius’ archipelagic baselines on the merits. The United Kingdom and  
9 United States have issued an objection, but as you will see from it, it is only for  
10 political reasons; it is based on the UK’s supposed claim to the Chagos Archipelago,  
11 not because the archipelagic baselines do not meet the legal requirements of  
12 article 47. Of course, the bases for such political objections are now entirely without  
13 force or legal consequence in light of the rulings of the ICJ and this Special  
14 Chamber, rulings which, as you now know, the Maldives has accepted, as the recent  
15 exchange of letters makes crystal clear.  
16

17 May I add, for completeness, that Maldives’ critique of Mauritius’ baselines should  
18 perhaps be taken with a pinch of sea salt: it has recognized that its own archipelagic  
19 baselines require certain “amendments” to become compliant with the requirements  
20 of article 47, and that these are “currently under consideration”.<sup>26</sup>  
21

22 Mr President, the U.S. State Department and the International Law Association have  
23 both affirmed that Mauritius’ archipelagic baselines, which enclose Blenheim Reef,  
24 do not depart to any appreciable extent from the general configuration of the Chagos  
25 Archipelago, and are fully compliant with all of the requirements of article 47 of the  
26 Convention and Part IV.<sup>27</sup> There is quite simply no basis whatsoever upon which it  
27 can reasonably be argued that Mauritius’ archipelagic baselines do not meet all the  
28 requirements of article 47.  
29

30 We therefore invite the Special Chamber to rule that Mauritius is an archipelagic  
31 State within the meaning of Part IV of the Convention; to rule that its archipelagic  
32 baselines meet the requirements of article 47, having been duly reported to the  
33 United Nations, and are fully consistent with the Convention; and to rule that the  
34 archipelagic baselines are to be given full effect in the delimitation.  
35

36 Mr President, I will turn now to the legal effect of Mauritius’ archipelagic baselines on  
37 this delimitation process. As set out in our Reply, for the purposes of delimitation the  
38 distinction between “drying reefs” and low-tide elevations is significant. As a “drying  
39 reef” located on a properly drawn archipelagic baseline, Blenheim Reef is to be  
40 treated no differently from an “island”. That is what article 47, paragraph 1, says,  
41 referring to “the outermost points of the outermost islands and drying reefs”. The  
42 language makes no distinction whatsoever between “islands” and “drying reefs”, for  
43 the purpose of drawing the baseline, or for the entitlements that arise from the  
44 location of such baselines.  
45

46 In short, the baseline derived from an “outermost ... drying reef” has precisely the  
47 same entitlement to a full maritime area as does a baseline derived from an

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<sup>26</sup> Maldives’ Counter-Memorial, para. 30.

<sup>27</sup> Mauritius’ Reply, para. 2.42.

1 “outermost island”. Moreover, under article 47, paragraph 1 – in contrast with  
2 article 13 – there is no requirement that the outermost drying reef to be included  
3 within the archipelagic baselines be located wholly or partially within 12 Miles of an  
4 island or mainland.

5  
6 In Mauritius’ case, the archipelagic baselines have been correctly drawn around  
7 Blenheim Reef, as we set out in our pleadings, and those baselines are entitled to be  
8 given the fullest effect for the purpose of maritime delimitation. This is the case in  
9 relation to the territorial sea, EEZ and continental shelf, both up to and beyond  
10 200 Miles. Nothing in the text of the Convention says otherwise. The full effect to be  
11 given to Blenheim Reef is plain from the terms of articles 48 and 49.

12  
13 Article 48 makes this crystal clear:

14  
15       The breadth of the territorial sea, the contiguous zone, the exclusive  
16       economic zone and the continental shelf shall be measured from  
17       archipelagic baselines drawn in accordance with article 47.

18  
19 Not “may” – “shall”. Article 48 could have said that the breadth of these maritime  
20 entitlements would be less if the baseline was drawn from the “outermost drying  
21 reef”. But it does not say that.

22  
23 The Special Chamber will have noted that Maldives dedicated all of a single  
24 paragraph of its Rejoinder to article 48. Here, Maldives argues that article 48

25  
26       simply extends to archipelagos the very same rule that is generally  
27       applicable to coastal States, namely that the breadth of maritime areas is  
28       to be measured from lawfully established baselines. It does not conflate  
29       baselines for the measurement of the breadth of maritime areas, and base  
30       points for delimitation purposes.<sup>28</sup>

31  
32 Where is the authority for that proposition? There is none. With great respect, this is  
33 gobbledygook, reading words about basepoints into the text of article 48 that do not  
34 exist. Article 48 – and Part IV more generally – do not apply “the very same rule”  
35 when it comes to archipelagic baselines.

36  
37 The provisions of Part IV are plainly distinct from those of Part II on the territorial sea  
38 and contiguous zone, or Part V on the EEZ and Part VI on the continental shelf.  
39 Those parts do not include any reference to “drying reefs”, or the entitlements which  
40 they generate. Nor do those Parts of the Convention, or any of the provisions they  
41 contain, purport to displace the plain meaning or effect of article 48.

42  
43 Article 49 is equally supportive of Mauritius’ position. The first paragraph states – it  
44 could not be clearer:

45  
46       The sovereignty of an archipelagic State extends to the waters enclosed  
47       by the archipelagic baselines drawn in accordance with article 47,  
48       described as archipelagic waters, regardless of their depth or distance  
49       from the coast.

---

<sup>28</sup> Maldives’ Rejoinder, para. 60 (footnote omitted).

1  
2 Paragraph 2 extends the sovereignty of the archipelagic States “to the air space over  
3 the archipelagic waters, as well as to their bed and subsoil, and the resources  
4 contained therein.”

5  
6 Maldives dismisses article 49 as “without merit” because “[i]t says nothing about  
7 maritime delimitation”.<sup>29</sup> Again, Maldives doesn’t like what article 49 says so it  
8 chooses to misread it, which is a curious thing to do when you are yourself an  
9 archipelagic State which presumably at some point will wish to rely on these  
10 provisions.

11  
12 Article 49 creates a wholly distinct legal status for archipelagic waters, regardless of  
13 their depth or distance from the coast. It extends to the archipelagic State largely the  
14 same sovereignty and sovereign rights that it would enjoy in relation to any land  
15 territory. So, as an archipelagic State, Mauritius enjoys full sovereignty over all the  
16 waters enclosed by its archipelagic baselines drawn in accordance with article 47.

17  
18 By Part IV, Mauritius’ sovereignty over Blenheim Reef, the appurtenant waters, air  
19 space, resources, bed and subsoil of Blenheim Reef are to be treated, as a matter of  
20 international law, in a manner that is indistinguishable from the sovereignty it enjoys  
21 in relation to an island or any other land territory. The Special Chamber will be  
22 familiar with the famous maxim that “the land dominates the sea”.<sup>30</sup> Pursuant to  
23 article 49, Blenheim Reef is to be treated, as a matter of law under the Convention,  
24 in a manner that is indistinguishable from land. Mauritius enjoys unfettered  
25 sovereignty and sovereign rights over those archipelagic areas. And those  
26 archipelagic areas have full rights in relation to the breadth of the territorial sea, EEZ  
27 and continental shelf. Just like islands, just like land.

28  
29 To address this obvious difficulty with its argument, Maldives seeks to distinguish  
30 between maritime entitlements and delimitation. To do so, it has invoked but a single  
31 authority – *Nicaragua v. Columbia* – to the effect that

32  
33 the issue of determining the baseline for the purpose of measuring the  
34 breadth of the continental shelf and the exclusive economic zone and the  
35 issue of identifying base points for drawing an equidistance/median line for  
36 the purpose of delimiting the continental shelf and the exclusive economic  
37 zone between adjacent/opposite States are two different issues.<sup>31</sup>

38  
39 Mr Parkhomenko has already addressed this and exposed the total fallacy in  
40 Maldives’ argument. As he showed you, in an earlier case between the same parties,  
41 which involved the delimitation of the maritime boundary, the Court gave full weight  
42 in the construction of the provisional equidistance line, and in the final boundary line  
43 that it adopted, to Edinburgh Reef, a low-tide elevation adjacent to Nicaragua’s  
44 coast.

45  
46 The text quoted by Maldives, entirely out of context, is the Court’s explanation of why  
47 it gave full weight to Edinburgh Reef for the purposes of maritime delimitation with

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<sup>29</sup> Maldives’ Rejoinder, para. 61.

<sup>30</sup> *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 96.

<sup>31</sup> Maldives’ Rejoinder, para. 45.

1 Colombia, but declined to allow Nicaragua to use it in its newly adopted system of  
2 straight baselines to represent its coastline.

3  
4 Moreover, the Court in the *Nicaragua v. Colombia* case was not dealing with  
5 archipelagic baselines, and was not interpreting or applying Part IV of the  
6 Convention. The “physical geography” of the relevant Mauritian coast – the coast of  
7 Blenheim Reef – is an extensive “drying reef”, as we have shown, and it is one that  
8 falls properly within the archipelagic baselines as drawn by Mauritius.

9  
10 Article 47 accords particular significance to “drying reefs”, for the determination of  
11 the entitlement to maritime spaces for archipelagos in Part IV. A basepoint on a  
12 “drying reef” used to construct an archipelagic baseline is properly also to be used  
13 for the purposes of delimitation. That is what Part IV says. That is what Mauritius has  
14 done.

15  
16 Mr President, is this not the first time that an international court or tribunal has been  
17 called upon to delimit the maritime boundary between two archipelagic States? It  
18 may be, however, that some inspiration can be drawn from the only maritime  
19 delimitation we are aware of involving one archipelagic State, and that is *Barbados v.*  
20 *Trinidad and Tobago*, which was an Annex VII tribunal. The tribunal in that case  
21 adopted Trinidad and Tobago’s archipelagic basepoints – located on the archipelagic  
22 baseline – for the construction of an equidistance line.

23  
24 Maldives argues that *Barbados v. Trinidad and Tobago* provides “no support  
25 whatsoever” for Mauritius. It offers two reasons.<sup>32</sup> First, it says that the Annex VII  
26 tribunal adopted Trinidad and Tobago’s archipelagic basepoints not because they  
27 were archipelagic basepoints, but because they were “appropriate for such  
28 purposes” independently “from the fact that the coastal State has selected them for  
29 drawing its archipelagic baselines.”<sup>33</sup> However, a close reading of the tribunal’s  
30 judgment makes clear that this is not correct. At paragraph 311 of the arbitral award,  
31 the tribunal noted that Trinidad and Tobago requested it to use its archipelagic  
32 basepoints to construct an equidistance line. By contrast, Barbados argued that  
33 archipelagic basepoints “cannot be used for calculating the equidistance line”.<sup>34</sup> At  
34 paragraph 2 of the technical report of the tribunal’s hydrographer, it was recorded  
35 that “the geographic coordinates of the pertinent turning points” adopted by the  
36 tribunal are four points “of the Trinidad and Tobago archipelagic baseline system”.<sup>35</sup>  
37 You can see these four points, T1 to T4, all located on the archipelagic baselines –  
38 on your screens.

39  
40 Maldives has not identified anything in the tribunal’s award to support its contention  
41 that these points were selected for any other reason than that they are located along  
42 Trinidad and Tobago’s archipelagic baselines.

43  

---

<sup>32</sup> Maldives’ Rejoinder, para. 46.

<sup>33</sup> Maldives’ Rejoinder, para. 47.

<sup>34</sup> *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 333.

<sup>35</sup> *Barbados v. Trinidad and Tobago*, Technical Report of the Tribunal’s Hydrographer, David H. Gray, M.A.Cs., P.Eng., C.LS.

1 The second argument made by Maldives is that the basepoints you can see on your  
2 screens – T1, T2, T3 and T4 – “all were islands, well above water at all times.”<sup>36</sup>  
3 Those are the words used by Maldives. Maldives describes these islands, noting in  
4 particular the charted height of each one. A number of responses may be made.  
5 First, there is nothing in the award to indicate that the selection of these points was  
6 in any way based on the charted heights of the relevant features. In this regard,  
7 there is nothing in the Convention – and in particular in Part IV – which imposes any  
8 sort of a height requirement. The fact that none of the features at issue in *Barbados*  
9 *v. Trinidad and Tobago* were low-tide elevations is simply irrelevant. The Arbitral  
10 Tribunal used points that appear to have been “the outermost points of the outermost  
11 islands”; if there had been “drying reefs” there located, which it seems there were  
12 not, they could just as well have chosen the “outermost points of the outermost ...  
13 drying reefs” because, as I have already mentioned, article 47 draws no distinction at  
14 all between “islands” and “drying reefs” for the purpose of entitlements or  
15 delimitation. The award in that case thus fully supports Mauritius’ contention that the  
16 “outermost points of the outermost ... drying reefs” of Blenheim Reef are properly to  
17 be used for determining entitlements and delimiting the relevant maritime boundary.  
18

19 Mr President, Maldives’ Rejoinder is long on hyperbole and much shorter on  
20 analysis. Maldives says that Mauritius’ reliance on its archipelagic baselines for the  
21 purposes of delimitation is – surprising words – “wholly without merit”,<sup>37</sup> but then it  
22 simply fails to engage at all with Part IV of the Convention, so we are sort of left  
23 hanging on the legal effects, or their view on the legal effects, of articles 46, 47, 48  
24 and 49, and their interaction with the Convention’s rules on delimitation and their  
25 application by the Annex VII tribunal in *Barbados v. Trinidad and Tobago*. Maldives  
26 has simply failed to engage with the language or realities of Part IV, and in particular  
27 article 47. Part IV does establish, as it says, a special regime, one that is distinct,  
28 one that accords a particular role and effect to archipelagic “drying reefs”. Blenheim  
29 Reef is not a “remote LTE”, as Maldives argues.<sup>38</sup> It is an integral part of Mauritius’  
30 coast, an area over which Mauritius has, under international law, full sovereignty, as  
31 though it were an island or a mainland coast. Under article 48, it generates a full  
32 entitlement; and so it follows from all of this that, like an island or a mainland coast,  
33 and it has an equally full entitlement for the purposes of delimitation.  
34

35 It follows from this, that the delimitation is properly to be carried out on the basis of  
36 Mauritius’ archipelagic baselines as drawn around Blenheim Reef, in the Memorial  
37 and Reply.  
38

39 Mr President, Members of the Tribunal, this is a moment to respond to aspects of  
40 question 3, which was given to us at about 4.30 p.m. yesterday afternoon. We were  
41 very grateful for the questions. The question asks  
42

43 whether the three points for Mauritius’ archipelagic baselines (C83, C84  
44 and C85) ... are the outermost points of drying reefs which are situated  
45 wholly or partly at a distance not exceeding 12 NM from Île Takamaka?  
46

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<sup>36</sup> Maldives’ Rejoinder, para. 48.

<sup>37</sup> Maldives’ Rejoinder, para. 4.

<sup>38</sup> Maldives’ Counter-Memorial, para. 114.

1 The answer, as we stated in our Reply, is that they are not. I direct you to  
2 footnote 75 of our Reply, at page 21, which you can see on your screens. Mauritius  
3 there stated that it had “become aware that point C85 was erroneously situated  
4 approximately 840 metres to the north of Blenheim Reef”, and that it was replotting  
5 its archipelagic basepoints and promulgating new Regulations under its Maritime  
6 Zones Act 2005. In relation to Blenheim Reef, the correct archipelagic basepoints  
7 are those identified by the CARIS LOTS software, which you will find in Table 4.1 on  
8 page 31 of our Memorial; and it is these that we are using for the construction of a  
9 revised archipelagic baseline pursuant to article 47 of the Convention. Accordingly,  
10 as you will have seen from our written pleadings, in both rounds we have not relied  
11 on C83, C84 or C85 – perhaps to our disadvantage because we have taken a more  
12 southerly point – for the construction of the provisional equidistance line.

13  
14 The second part of question 3 asks whether article 47, paragraph 4, permits the use  
15 of basepoints that are beyond 12 NM from Île Takamaka. Mr President, in our  
16 submission, article 47, paragraph 4, is concerned only with low-tide elevations, not  
17 drying reefs within the meaning of article 47, paragraph 1, which have full  
18 entitlements, just like an island, and as a drying reef within the meaning of article 47,  
19 paragraph 1, its distance from any island is totally irrelevant. Article 47, paragraph 4,  
20 is therefore not pertinent to basepoints on Blenheim Reef, because it is a drying reef  
21 and therefore governed by article 47, paragraph 1. Even if it was only a low-tide  
22 elevation, and not a drying reef, which is not the case, you would follow exactly the  
23 same approach as that set forth by Mr Parhomenko: Blenheim Reef is a single  
24 feature, part of which is within 12 Miles of Île Takamaka, so you can put a basepoint  
25 on any part of it. So, on either approach, article 13, paragraph 1, or article 47,  
26 paragraph 1, or even article 47, paragraph 4, although we say you do not have to go  
27 there, the answer to your question is: yes.

28  
29 The archipelagic baselines, and the basepoints, lead to exactly the same result as if  
30 the delimitation was based on basepoints situated on Blenheim Reef as a low-tide  
31 elevation under article 13. Mr Parkhomenko has set out the relevant steps to be  
32 applied. Whilst the basis for situating basepoints on Blenheim Reef in stage one may  
33 be different – an LTE approach (under article 13) or a drying reefs approach (under  
34 article 47) – the result in relation to location is exactly the same. On your screens  
35 you can see the depiction of that familiar provisional equidistance line.

36  
37 Mr President, Members of the Special Chamber, one minute early, thank you for  
38 your kind attention. I would now ask that you invite, after lunch, Mr Reichhold to the  
39 podium to address the application of stages two and three to the provisional  
40 equidistance line on the basis of articles 13 and 47 of the Convention.

41  
42 Thank you so much for your attention.

43  
44 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Sands, for your  
45 statement. This brings us to the end of this morning's sitting.

46  
47 The hearing will be resumed at 3 p.m. The sitting is now adjourned.

48  
49

*(The sitting closed at 1.10 p.m.)*