

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2022

Public sitting

held on Friday, 21 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)

Verbatim Record

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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1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good morning. The Special
2 Chamber will today continue its hearing on the merits of the dispute concerning the
3 delimitation of the maritime boundary between Mauritius and Maldives in the Indian
4 Ocean.

5
6 I give the floor to Mr Akhavan to continue the Maldives' first round of oral arguments.
7

8 **MR AKHAVAN:** Mr President, distinguished Members of the Special Chamber, good
9 morning. Yesterday, my colleagues Dr Hart and Professor Mbengue explained why,
10 in respect of Mauritius' new claim to an outer continental shelf, there is no jurisdiction
11 without a prior dispute, and no admissibility without a prior and timely CLCS
12 submission, at the critical date in 2019 when Mauritius elected to commence
13 proceedings. I will now address why, in addition, Mauritius' claim of natural
14 prolongation on the Gardiner Seamounts is inadmissible because it is manifestly
15 unfounded.
16

17 Mr President, Mauritius' current theory was first mentioned in its Reply in
18 paragraph 3.14 and supported by a single source in footnote 204; namely the
19 *Gazetteer of Undersea Feature Names*. It was elaborated on for the first time by
20 Mauritius' distinguished expert counsel, Dr Badal, on Monday. He made a number of
21 arguments which clearly went beyond anything found in Mauritius' written pleadings.
22 The Maldives has already placed on record its concerns about having to deal with
23 new arguments and evidence from expert counsel. It is exceedingly difficult, within
24 48 hours, to prepare a full response to each and every point that he raised.
25

26 The Maldives thus places on record that the fact that it does not address each and
27 every issue raised by Dr Badal should not be considered as an admission. That is
28 a matter of elementary procedural fairness. Nonetheless, as I will explain today,
29 nothing – nothing – that Dr Badal said on Monday changes the fact that Mauritius'
30 claim is manifestly unfounded. There can be no doubt, as I will explain, that its
31 Gardiner Seamounts theory is not supported by a shred of evidence under the CLCS
32 Guidelines. The CLCS would certainly reject Mauritius' submission.
33

34 Mr President, my statement will be in three parts. First, I will explain why Mauritius'
35 failure to even make a *prima facie* case is a question of admissibility. Second, I will
36 explain a number of obvious technical flaws in Mauritius' claim. Third, I will address
37 what is the most profound and fatal flaw in Mauritius' claim: the complete absence of
38 any measured bathymetric data in respect of the Gardiner Seamounts.
39

40 Mr President, turning to the first point, I wish to briefly explain why the Maldives has
41 raised this issue as a matter of admissibility rather than the merits. As I explained in
42 the introduction yesterday, Part XV courts and tribunals, with the greatest respect,
43 cannot usurp the functions of the CLCS; they must avoid a situation where a finding
44 of entitlement is subsequently contradicted by CLCS recommendations. That is why
45 the Special Chamber in *Ghana v. Côte d'Ivoire* held that, before it could proceed to
46 delimitation of the outer continental shelf, it had to ascertain "whether the relevant
47 submissions [were] admissible";¹ the Chamber found that they were admissible only

¹ *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 482.

1 because there was “no doubt” – no doubt – as to the relevant entitlements of those
2 two States.² Likewise, in *Bangladesh v. Myanmar*, the Chamber recognized that it
3 must not proceed with delimitation of the outer continental shelf if there is “significant
4 uncertainty” regarding entitlement.³ Thus, as a matter of admissibility, the burden of
5 proof rests on Mauritius to clearly establish its claim; and that evidence, of course,
6 must be consistent with the CLCS Guidelines.

7
8 But the Maldives’ argument on admissibility goes even further. It implicates the
9 appropriate procedure for dismissal of a claim *in limine litis* where it is manifestly
10 unfounded. National legal systems recognize the right to eliminate frivolous claims at
11 an early stage of proceedings. There is recognition in ICJ jurisprudence that the
12 absence of an express “filtering procedure” in the Court’s Statute or Rules “makes it
13 necessary to regard a right to take similar action, on similar grounds, as being part of
14 the inherent powers or jurisdiction of the Court as an international tribunal”.⁴

15
16 The Court has exercised this power, for example, in the *Legality of the Use of Force*
17 cases, where it held that summary dismissal of Yugoslavia’s claims – Yugoslavia as
18 it then was – would “contribute to the sound administration of justice”.⁵ The simple
19 point is that the Maldives should not be called upon to answer a claim that is *prima*
20 *facie* unfounded. It is only in this limited context that the Maldives will address certain
21 fundamental and obvious flaws in Mauritius’ claim, without fully addressing all
22 aspects on the merits.

23
24 Mr President, I will begin by addressing four matters showing that Mauritius’ claim to
25 an entitlement is obviously flawed, with the result that the Chamber should dismiss it
26 as inadmissible.

27
28 First, the current basis for entitlement which Mauritius asserts flatly contradicts the
29 case which it has previously advanced. The Parties agree that the Chagos
30 Archipelago sits atop the Chagos-Laccadive Ridge (CLR). Prior to its Reply,
31 Mauritius expressly and repeatedly admitted that the CLR is bounded to the east by
32 the Chagos Trough. This admission is a concession that because of this
33 morphological break, it is not possible – it is not possible – to show a natural
34 prolongation directly from the Chagos Archipelago to FOS-VIT31B, the critical foot of
35 slope point, because it places the base of slope well within Mauritius’ 200 nm limit,
36 not beyond. A natural prolongation could only be established if there was a way
37 around the Chagos Trough without encroaching on the Maldives’ uncontested
38 200 nm limit. As Ms Sander explained yesterday, from the Maldives’ land territory,
39 natural prolongation is established through the Laccadive Basin. As noted in the
40 Counter-Memorial, the Laccadive Basin is morphologically linked to the Maldives
41 within its 200 nm limit, but does not abut the CLR anywhere within the 200 nm limit

² *Ibid.*, para. 491 (emphasis added).

³ *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 397.

⁴ *Northern Cameroons (Cameroon v. United Kingdom)*, Preliminary Objections, *I.C.J. Reports* 1963, p. 15, Separate Opinion of Judge Sir Gerald Fitzmaurice at pp. 106–7 (internal footnote omitted).

⁵ *Legality of Use of Force (Yugoslavia v. Spain)*, Provisional Measures, Order of 2 June 1999, *I.C.J. Reports* 1999, p. 761 at p. 773, para. 35; *Legality of Use of Force (Yugoslavia v. United States of America)*, Provisional Measures, Order of 2 June 1999, *I.C.J. Reports* 1999, p. 916 at p. 925, para. 29.

1 of Mauritius. It is clearly separated from the CLR by the Chagos Trough, south of
2 0° latitude, the equator.⁶

3
4 Mauritius has clearly and repeatedly conceded this. Let’s look at some of what it said
5 on a variety of different occasions.

6
7 In its Memorial, Mauritius stated: “To the south and east of the Chagos Archipelago
8 there is a linear depression, the Chagos Trough, which runs along[side] the CLR”.⁷
9 This exact statement was repeated in its 2021 preliminary information:⁸ the Chagos
10 Trough was said to run “alongside the CLR” – not just part of it. Notably, it was also
11 consistent with Mauritius’ position in its 2019 CLCS submission on the Southern
12 Chagos Archipelago Region, submitted shortly before these proceedings. That
13 submission recognized that “[t]he Chagos Ridge (the southern segment of the CLR)
14 is bounded to the east by the Chagos Trough” and that this Ridge “represents the
15 submerged prolongation of the relevant land mass of the Republic of Mauritius in this
16 area”.⁹

17
18 Mauritius’ CLCS submission further confirms that the Chagos Trough is “also called
19 the Vishnu Fracture Zone”,¹⁰ and repeats that this feature represents the eastern
20 boundary of the CLR. Specifically, it repeats Mauritius’ previous position that “[t]he
21 Chagos Ridge (the southern segment of the CLR) is bounded to the east by the
22 Chagos Trough”.¹¹

23
24 Even in its 2022 CLCS submission, filed just two days prior to the Reply and on
25 which it relies, Mauritius still advanced the position that the Chagos Trough
26 represented a morphological break that “extend[s] from south of the Chagos
27 Archipelago Region up to the equator around 0° and 1°N”.¹² This is obviously a
28 recognition that the Chagos Trough extends throughout Mauritius’ EEZ, from the
29 south to the north, and only ends around 0° and 1° north of the equator, well within
30 the Maldives’ EEZ. In fact, it is at a latitude corresponding to the island where the
31 Maldives’ capital, Malé, is situated.

32

⁶ See Counter Memorial of the Republic of Maldives (“MCM”), para. 85.

⁷ Memorial of the Republic of Mauritius (“MM”), para. 2.35.

⁸ Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5), para. 5-4.

⁹ Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, March 2019, Doc MCSS-ES-DOC (MCM, Annex 6), paras. 7-2–7-3.

¹⁰ Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (Reply of the Republic of Mauritius (“MR”), Annex 3), para. 2.3.1.2. Oceanic fracture zones are common features of the deep ocean floor, formed within normal oceanic crust, and associated with the oceanic plates moving apart as a result of plate tectonics.

¹¹ Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Executive Summary, Doc MCNS-ES-DOC, April 2022 (Rejoinder of the Republic of Maldives (“MRJ”), Annex 5), para. 8-2 (emphasis added).

¹² Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (MR, Annex 3), para. 2.3.1.2 (emphasis added).

1 In the Reply, and again in its oral submissions on Monday, however, Mauritius' case
2 has been premised on the Chagos Trough not preventing it from establishing natural
3 prolongation. This is the only way it could get around the Maldives' EEZ. Specifically,
4 Mauritius has argued that a feature known as the Gardiner Seamounts interrupts the
5 Chagos Trough, such that it represents an area where Mauritius can establish a
6 submerged prolongation to an "elevated region" that Mauritius contends is the
7 eastern extension of the CLR. The Reply stated at paragraph 4.13:

8
9 Nor is Maldives correct that the Chagos Trough "passes through the entire
10 EEZ of Mauritius' such that, Maldives contends, the Trough 'creates a clear
11 break in the submerged prolongation of the Chagos Archipelago
12 landmass.'" In fact, ... although part of the Chagos Trough is located in
13 Mauritius' EEZ, its path is interrupted by the Gardiner Seamounts, a feature
14 that enables Mauritius to establish the natural prolongation of its
15 landmass.¹³

16
17 It is conspicuous that this feature, the Gardiner Seamounts, was never mentioned by
18 Mauritius prior to the Reply. The idea that it supports a submerged prolongation also
19 contradicts the descriptions by Mauritius of the Chagos Trough as a continuous
20 feature bounding the CLR. Indeed, the Gardiner Seamounts was so irrelevant to
21 Mauritius' 2022 CLCS submission that the only tangential reference to it is where it is
22 labelled on a seafloor map.¹⁴ There was no suggestion whatsoever that this feature
23 could support a natural prolongation.

24
25 Implicit in Mauritius' descriptions of the Chagos Trough as, for example, "a long well-
26 defined oriented trench",¹⁵ is a recognition by Mauritius that this was the location of
27 the base of slope. The Maldives agrees that the base of slope does indeed fall within
28 the Chagos Trough until the point between 0° and 1° north of the equator where the
29 Trough loses its morphological expression. This, as I have explained, is what allows
30 the Maldives to establish its natural prolongation across the Laccadive Basin.
31 Mauritius' new case plainly contradicts its earlier position. As indicated by the red
32 arrows, its new base of slope has resulted in a significant shift to the east from where
33 it previously claimed that the base of slope is located.

34
35 Now, Mauritius' case rests on an allegation of a more easterly, seaward base of
36 slope. In paragraph 4.12 of its Reply, Mauritius states:

37
38 [T]he base of slope region starts southward of the Chagos-Laccadive
39 Ridge, abutting the eastern extension of the [CLR] within the EEZ of
40 Mauritius. The region continues northward along the [CLR] extension
41 without encroaching on the EEZ of Maldives. The foot of slope points,
42 including the critical FOS-VIT31B, are established in this base of slope
43 region, outside Maldives' EEZ, along the continuous eastern flank of the
44 Chagos and Maldivian Ridges.¹⁶

13 MR, para. 4.13 (emphasis added).

14 Apart from being labelled on a single figure (Figure 2.1).

15 *Ibid.*, para. 2.3.1.2.

16 MR, para. 4.12 (emphasis added).

1 Thus, in Figure R4.3 of its Reply, which is extracted from its CLCS submission,¹⁷
2 Mauritius presented an entirely new base of slope region to the east of the Chagos
3 Trough – the light grey line on the figure. Let us look at a comparison of the two base
4 of slope lines that Mauritius has, at various points of time, sought to advance – the
5 correctly located more western base of slope in the Chagos Trough, corresponding
6 to its bathymetric profile, which I will come to shortly, and the grey sinuous line which
7 Mauritius has manufactured to the east. You see that in the figure before you. The
8 line which Mauritius identifies as its new base of slope¹⁸ is not located within the
9 Chagos Trough, along the Vishnu Fracture Zone. The black arrows show that it is a
10 different base of slope, located on a more seaward minor elevation, associated with
11 a different fracture zone (termed the Northern Boussole Fracture Zone (NBFZ))
12 which occurs within the deep ocean floor of the Indian Ocean Basin.¹⁹
13

14 In other words, the case which Mauritius now advances plainly contradicts its
15 description of the relevant geomorphology in its Memorial and, perhaps more
16 importantly, which it has employed in the preliminary information and submission it
17 has filed with the CLCS. That gives serious cause for doubt about Mauritius’
18 conviction in its own claim.
19

20 Second, I ask the question: why would Mauritius devise this theory which contradicts
21 its own previously pleaded case and its technical position before the CLCS? The
22 answer is simple: it has done so purely as part of a litigation strategy, not a scientific
23 exercise. Given Mauritius’ recognition of the Chagos Trough as a morphological
24 break, the Maldives pointed out in its Counter-Memorial the obvious fact that
25 Mauritius’ submerged prolongation could not cross this break. Accordingly, Mauritius
26 could only establish a natural prolongation which stretched for some 410 nm within
27 the Maldives’ EEZ; 260 miles to the north, past the equidistance line, before making
28 an abrupt U-turn to the south-east, for another 206 nm, before arriving at the single
29 foot of slope. The two red arrows on this graphic show the natural prolongation
30 avoiding the base of slope which was common ground at that stage.
31

32 Notably, Mauritius’ 2022 CLCS submission appears to conform with the view that the
33 only possible path of natural prolongation which avoids the Chagos Trough is along
34 this route. It included a figure showing the profile of the path of natural prolongation
35 with reference to the single-beam bathymetric data on which Mauritius had relied in
36 identifying the critical foot of slope point. Yet Mauritius’ new Gardiner Seamounts
37 theory presupposes a path of natural prolongation which, as shown in red, goes in
38 the opposite direction. This is further depicted as a dashed red arrow in Figure 12 of
39 the Maldives’ Rejoinder. You can also see the convergence of the bathymetric
40 profile, in black, with Mauritius’ original submerged prolongation in solid red. That

¹⁷ Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (MR, Annex 3), Figure 3.1(b).

¹⁸ It is difficult to comprehend Mauritius’ reference to the BOS region “start[ing] southward of the Chagos-Laccadive Ridge”: MR, para. 4.12. The BOS region which it identifies in its Reply stops to the east of the CLR, at a latitude where the CLR continues for a significant distance to the south: see MR, para. 4.10, Figure R4.3.

¹⁹ Muhammad Shuhail and others, “Formation and evolution of the Chain-Kairali Escarpment and the Vishnu Fracture Zone in the Western Indian Ocean” (2018) 164 *Journal of Asian Earth Sciences*, p. 307 (MRej, Annex 19), at pp. 310, 312, 313.

1 original submerged prolongation results from the location of the base of slope, which
2 the Maldives had correctly identified in the Counter-Memorial.

3
4 In its Counter-Memorial, the Maldives made clear that Mauritius could, in fact, not
5 rely on this natural prolongation to establish entitlement in the area it now claims. It
6 stated:

7
8 UNCLOS article 76 provides that a coastal State must establish a
9 submerged natural prolongation from its land territory across its seabed
10 through the shelf, slope and rise to the outer edge of its continental margin.
11 It cannot validly claim an OCS entitlement based on the natural
12 prolongation of another State's undisputed submerged land territory. Yet
13 this is precisely what Mauritius seeks to do. Notably, the sole foot of slope
14 point on which Mauritius bases its claim to an OCS ... is not part of the
15 natural prolongation of its submerged land territory across its seabed
16 through the shelf, slope and rise. Rather, FOS-VIT31B can only be
17 characterised as the natural prolongation of the Maldives' submerged land
18 territory across the Maldives' seabed.²⁰

19
20 Mauritius did not contest this legal position in its Reply, and still to this day has not
21 done so. However, as I have explained, in its Reply it invented a new case relying on
22 natural prolongation via the Gardiner Seamounts, as now shown. Again, as I have
23 already said, in explaining its new case on natural prolongation, Mauritius was at
24 pains to emphasize that, on this theory, the base of slope region ran to the east of
25 the Chagos Trough "and continue[d] northward along the Chagos-Laccadive Ridge
26 extension without encroaching on the EEZ of Maldives".²¹ It similarly stressed that
27 "the critical FOS-VIT31B ... [is] outside Maldives' EEZ".²²

28
29 Figure R4.3 of its Reply showed Mauritius' new base of slope region. If we zoom in
30 to the section at the edge of the Maldives' 200 nm limit, it is striking that the new
31 base of slope seems perfectly tailored to avoid the Maldives' EEZ, although it still
32 encroaches on parts of it.

33
34 So what is clear is that Mauritius' new base of slope theory was not based on
35 physical facts. Instead, it was devised as part of Mauritius' litigation strategy of
36 circumventing the Maldives' EEZ. As Professor Mbengue explained, unlike its 2019
37 submission which listed two former CLCS members, the only two experts listed in
38 Mauritius' 2022 submission are two of its counsel in this proceeding. This helps to
39 explain why this theory is so technically deficient.

40
41 Third, there are a number of obvious flaws with the theory of entitlement based on a
42 submerged prolongation through the Gardiner Seamounts. As the Maldives has
43 made clear, it is not currently required to engage with the case on the merits, and the
44 purpose of my speech now is simply to identify a number of matters which plainly
45 show that this claim does not even meet the requisite standard to proceed to a
46 merits determination.

47

²⁰ MCM, para. 82.

²¹ MR, para. 4.12.

²² MR, para. 4.12 (emphasis added).

1 One major flaw is that Mauritius' base of slope line, used to support the alleged
2 submerged prolongation through the Gardiner Seamounts, is not identified in
3 accordance with the CLCS Guidelines. It is thus not one that the CLCS would ever
4 conceivably accept. According to paragraph 5.4.5 of the CLCS Guidelines, the base
5 of slope must be identified "where the lower part of the slope ... merges into the top
6 of ... the deep ocean floor".²³ In order to make this assessment, the same paragraph
7 sets out a two-step methodology as follows:

8
9 The Commission recommends that the search for the base of the
10 continental slope be carried out by means of a two-step approach. First,
11 the search for its seaward edge should start from ... the deep ocean floor
12 ... in a direction towards the continental slope. Secondly, the search for its
13 landward edge should start from the lower part of the slope in the direction
14 of the ... deep ocean floor.²⁴

15
16 The figure now shown depicts the two-step approach: in the first image, you see that
17 the search for the seaward edge begins from below; in the second image, you see
18 the search for the landward edge begins from above. As can be seen by the red-
19 shaded area in the second image, an application of this methodology yields a region
20 identified as the base of slope that has both a seaward and landward edge. Here,
21 you can see the base of slope region correctly identified by the Maldives in light grey;
22 you will notice that it has both a seaward and a landward edge.

23
24 Mauritius, on the other hand, has plainly ignored this requirement. Instead, it
25 proposes "linking regions of similar gradient" at approximately 0.7 degrees,²⁵
26 resulting in the single grey line to the east that is now in front of you. You can see
27 that, unlike the Maldives' base of slope region, Mauritius' single line does not have
28 separate seaward and landward edges as required by the CLCS Guidelines. This
29 line is in fact located within the deep ocean floor of the Indian Ocean Basin.²⁶

30
31 Further, Dr Badal's reliance on an "elevated region", which he also describes as a
32 "raised topographic feature",²⁷ as the basis for Mauritius' supposed submerged
33 prolongation, is entirely misconceived, with the greatest respect. The so-called
34 "elevated region" along the ridge supposedly connects the Gardiner Seamounts to
35 the foot of slope.²⁸ Dr Badal showed this feature, on the left, with a series of white
36 profiles crossing the Chagos Trough and so-called "elevated region". But these do
37 not reflect the geomorphology of the seabed in any way. The white profiles have
38 simply been added to grossly exaggerate the degree of elevation; the proportions of
39 the small bridge shapes are nowhere near accurate. They suggest a height of the
40 feature compared to its width which is wildly inaccurate.

²³ United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, "Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf", 13 May 1999, Doc CLCS/11, para. 5.4.5.

²⁴ *Ibid.*

²⁵ Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (MR, Annex 3), para. 3.2.6. See also MR, para. 4.10.

²⁶ See MRej, para. 134.

²⁷ ITLOS/PV.22C28/2, p. 16 (line 2) (Badal). At the time of drafting, the Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

²⁸ ITLOS/PV.22C28/2, p. 13 (lines 4–5) (Badal).

1
2 Equally importantly, the drawn white bridges entirely ignore the actual topography of
3 the slope between the CLR and the Chagos Trough. This is demonstrated by the
4 figure on the right, which depicts an analysis by the Maldives in the same region.
5 The white profiles on this figure – which actually represent the morphological reality
6 – demonstrate that to the east there is a steep descent into the Chagos Trough
7 (supporting the fact that this is where the base of slope is to be properly identified),
8 whereas Mauritius’ supposed “elevated region” is in fact barely elevated at all.

9
10 Indeed, in its 2019 submission for the Southern Chagos Region, Mauritius itself
11 characterized the southern portion of this very same elevated region as the deep
12 ocean floor. As can be seen on this figure, the base of slope identified in that
13 submission is well to the west of the supposed “elevated region”. The point,
14 Mr President, is that the deep ocean floor has various bumps and elevations along it,
15 but they still form part of the deep ocean floor. Such features do not represent the
16 submerged prolongation of any State’s land territory. In fact, this is stated expressly
17 in article 76, paragraph 3, of the Convention, which states that the continental margin
18 “does not include ...” does not include “... the deep ocean floor with its oceanic
19 ridges or the subsoil thereof.”

20
21 Dr Badal tried to justify Mauritius’ reliance on this minor feature, with reference to
22 technical details describing geophysical data relating to the NBFZ, and claimed that
23 this data supported Mauritius’ new base of slope. In particular, he referred to the
24 relative ages of the seafloor on either side of the NBFZ, which had been measured
25 using magnetic anomaly techniques. But the age of the seafloor is entirely irrelevant
26 to the existence of natural prolongation or a base of slope. In reality, it is a common
27 feature of fracture zones throughout the world’s ocean basins that they divide
28 seafloor of different ages. This has nothing to do with whether they form part of
29 a continental margin. To the contrary, fracture zones are characteristic of oceanic
30 ridges in the sense of article 76, paragraph 3, which I have just quoted and which
31 expressly excludes their characterization as part of the continental margin.

32
33 If that wasn’t enough, there are also obvious morphological breaks in this minor
34 seafloor high before it arrives at the foot of slope, as indicated in the Rejoinder.²⁹

35
36 The bathymetric profile now shown illustrates Mauritius’ proposed submerged
37 prolongation from its landmass to FOS-VIT31B, passing through the Gardiner
38 Seamounts. This path was never illustrated by Mauritius in its Reply and barely
39 alluded to by Dr Badal on Monday. He never showed the profile that is now before
40 you. Here, it can be seen on the right that the “elevated region” is in fact a relatively
41 flat, deep feature with an average depth of 4,800 metres, with a number of significant
42 depressions along its length that reach depths of 5,000 metres, indicated by the red
43 arrows; the deep ocean floor by Mauritius’ own admission. Here is what Mauritius
44 said in its Memorial, quoting from its 2021 preliminary information: “To the north, the
45 CLR extends further eastward as irregular seafloor until it merges with the flat-lying
46 deep ocean floor at a depth of around 5000m.”³⁰

47

²⁹ MRej, para. 135.

³⁰ MM, para. 2.35

1 Fourth, Mauritius' even newer theory does not salvage its case. We were somewhat
2 astonished that, on Monday, Dr Badal announced yet another theory for overcoming
3 Mauritius' lack of submerged prolongation to the critical foot of slope point. With little
4 fanfare, he stated:

5
6 [B]ecause the Chagos Trough is also interrupted in the north with a similar
7 integral protuberance, Mauritius can thus equally, I would say, have its
8 natural prolongation northwards along an elevated saddle across the
9 Chagos Trough. ... Like the Gardiner Seamounts, this saddle also merges
10 with the Overall Elevated Region of the CLR.³¹

11
12 Distinguished Members of the Special Chamber, you could scour Mauritius'
13 pleadings in this case looking for a single reference to this elevated saddle, and the
14 search would be in vain. It is a brand new theory presented by Dr Badal for the first
15 time ever on Monday.

16
17 But, with the greatest respect, it is just as hopeless as Mauritius' theory based on the
18 Gardiner Seamounts. To refresh your memory, here is the slide used by Dr Badal to
19 depict this entirely new path of prolongation. You can see the saddle marked in the
20 middle. This figure depicts the depth of the saddle more clearly, with the deepest
21 areas in blue. Even a cursory examination demonstrates that this region is a flat part
22 of the deep ocean floor, with depths approaching 5,000 metres. The information is
23 there and we invite Mauritius to tell us why we have not arrived at the right figures. It
24 can only be approached through the Laccadive Basin from the north, indicated by a
25 black arrow, deep within the 200 nm limit of the Maldives.

26
27 Mauritius suggests further that the southernmost foot of slope point of the Maldives
28 supports its identification of this saddle.³² However, this foot of slope point in fact
29 supports Maldives' position that Mauritius has no geomorphological connection to
30 the east of the Chagos Trough through a saddle. The foot of slope point is located
31 along a small feature, probably a seamount, that is morphologically connected to the
32 slope of the CLR. As such, you can see that the base of slope region engulfs this
33 small seamount. This is also confirmed by the measured bathymetric data upon
34 which this foot of slope is based – the single beam profile UM68, which illustrates the
35 seamount merged into the base of the steep slope of the CLR.

36
37 The base of slope proposed by Mauritius, represented by the pink dashed line now
38 marked on the bathymetric profile, does not coincide with this region at all; it is
39 located on what is clearly the flat and featureless deep ocean floor. So Mauritius can
40 draw no support for its unfounded base of slope region from the analysis underlying
41 the submission of the Maldives, which, unlike that of Mauritius, has remained
42 unchanged since it was filed in 2010, almost a decade before these proceedings.

43
44 Mr President, that brings me to the most important part of my speech, and the last
45 part, you will be happy to hear, which relates to the most obvious and utterly fatal
46 flaw in Mauritius' case. Mr President, you will recall that article 4 of Annex II of
47 UNCLOS requires a coastal State to submit particulars of the outer limits of the
48 continental shelf to the CLCS "along with supporting scientific and technical data".

³¹ ITLOS/PV.22C28/2, p. 16, (lines 22–29) (Badal).

³² ITLOS/PV.22C28/2, p. 16, (lines 31–36) (Badal).

1 This begs the question: what scientific and technical data, if any, has Mauritius
2 produced to support its Gardiner Seamounts theory? After a thorough search of
3 Mauritius' written pleadings, the Maldives discovered the lonely and neglected
4 footnote 204.

5
6 That footnote appears in paragraph 4.13 of the Reply, which I quoted in full a few
7 minutes ago. It is the paragraph – the only paragraph – in which Mauritius asserts
8 that the Gardiner Seamounts interrupts the Chagos Trough and “enables Mauritius
9 to establish the natural prolongation of its landmass” to the east of the Chagos
10 Trough.³³ Footnote 204 is the only citation in this paragraph, and indeed anywhere
11 else in the Reply, which purports to support the “interruption” posed by the Gardiner
12 Seamounts.

13
14 Now let us look at footnote 204 itself. Here it is in full:

15
16 General Bathymetric Chart of the Oceans Sub-Committee on Undersea
17 Feature Names, International Hydrographic Organization-
18 Intergovernmental Oceanographic Commission, *Gazetteer of Undersea*
19 *Feature Names* available at [https://gebco.net/data_and_products/](https://gebco.net/data_and_products/undersea_feature_names)
20 [undersea_feature_names](https://gebco.net/data_and_products/undersea_feature_names).³⁴

21
22 Dr Badal did not even mention the *Gazetteer*. Mauritius' entire claim rests on that
23 one source. But the *Gazetteer* is no authority at all. It is no more than a basic
24 roadmap indicating the name and general location of undersea features. The
25 GEBCO Sub-Committee on Undersea Feature Names (“SCUFN”) is responsible for
26 the *Gazetteer*. GEBCO, of course, stands for General Bathymetric Chart of the
27 Oceans, a global compilation of data that I will turn to shortly.

28
29 For present purposes, it is simply noted that the *Gazetteer* identifies
30 geomorphological features but does not purport to describe them. It does not provide
31 technical details any more than a political map in a world atlas showing countries
32 and cities could be equated with a detailed topographic map used by a mountaineer
33 to scale Mount Everest. By way of illustration, before you is a screenshot of the
34 *Gazetteer* with the entry for Gardiner Seamounts selected and appearing in orange.
35 You can see that this entry is merely a line with a label placed on top of the map of
36 GEBCO data indicating the general location of that feature. It contains no additional
37 technical data or analysis whatsoever.

38
39 The crucial question is: does this purported “evidence” in fact support the contention
40 that the Gardiner Seamounts interrupt the Chagos Trough? The answer is an
41 emphatic “no” – and, if this were the evidence which Mauritius presented to the
42 CLCS, its claim would be swiftly and definitely rejected.

43
44 It is important at this point to understand what data and information are contained in
45 submissions to the CLCS and how, in turn, the CLCS considers this data.
46 Bathymetry, as you will be well aware, is the measurement of the depths of the
47 seafloor which provide an understanding of its topography. In considering how the
48 CLCS examines questions of submerged prolongation and morphological continuity,

³³ MR, para. 4.13 (emphasis added).

³⁴ MR, footnote 204, accompanying para. 4.13.

1 it is necessary to consider the three main methods of gathering bathymetric data.
2 These are depicted in the following figure:

3
4 The first method is to acquire bathymetric data by single beam echosounders. This is
5 gathered by a survey vessel sending out a sound wave that is reflected by the
6 seafloor and returns to a receiver on the vessel providing a single depth sounding.
7 As the vessel moves along its path, a series of continuous depth soundings provides
8 a bathymetric profile. The majority of the measured bathymetric data in this part of
9 the Central Indian Ocean is comprised of single beam echosounder data that can be
10 up to 50 years old or more, and is not particularly accurate. Some of this data can
11 have a margin of error of tens of kilometres. At the bottom left of this figure, we see
12 an example of this data along the Maldives' continental margin highlighted on the
13 map on the right, with individual depth soundings having created single-beam tracks
14 at various spacings.

15
16 The second method is to acquire data by multibeam echosounders – a more recent
17 and significantly more accurate form of technology. This is gathered by a survey
18 vessel that sends out fan-shaped sound waves that are reflected by the seabed and
19 return to a receiver on the vessel, providing multiple depth soundings. As the vessel
20 moves along its path, a swathe of bathymetric data is collected, giving detailed
21 3D coverage of the ocean floor. There is very little multibeam data in this part of the
22 Indian Ocean. Again, at the bottom of the figure, we see an example of this data in
23 the exact same region, with a swathe of continuous bathymetric data revealing, in
24 high resolution and in three dimensions, the depth and shape of the seafloor.

25
26 The third method is bathymetric data derived from satellite altimetry. This is merely a
27 rough estimate of bathymetry based on measurements of the ocean surface height
28 (that is, the sea level) taken by satellite radar altimeters.

29
30 These measure the time it takes a radar pulse to make a round-trip from the satellite
31 to the sea's surface and back. This method yields complete coverage of the seafloor,
32 but it is much lower in precision than the other two methods; it provides only a rough
33 estimate of bathymetry. For comparison, again, at the bottom right of the figure, we
34 can see complete bathymetric coverage derived from satellite altimetry in the same
35 region. You will notice that the data is more extensive but the resolution is much
36 lower than in the multibeam and even single-beam data examples.

37
38 The first two types of data, single-beam and multi-beam echosounder data,
39 constitute measured data and can be accessed from public domain databases such
40 as the United States National Geophysical Database, or NGDC, referred to by
41 Dr Badal on Monday. Satellite altimetry-derived data is the least accurate of the
42 three.

43
44 Mr President, Professor Robert Ballard, the famous oceanographer and explorer
45 who discovered the wreck of the Titanic, compared satellite estimates of ocean
46 depths to

47
48 throwing a wet blanket over a table set for a fancy dinner party. You might
49 see the outlines of four candelabras surrounded by a dozen chairs, perhaps
50 some drinking glasses if the blanket's really wet. But that's about it. You

1 wouldn't see the utensils and plates, let alone what's for dinner. Satellite
2 data, in other words, only gives a rough idea of what lies beneath the sea.³⁵

3
4 Those are the words of Professor Ballard.

5
6 Perhaps the technology will improve in the future, and we will look back at current
7 maps of the seafloor with the same amusement that we look at wildly inaccurate
8 medieval maps, with sea monsters and sirens luring unsuspecting sailors to their
9 death. But for now, we have to be content with the three methods I have described.

10
11 The figure before you shows the relevant part of the Central Indian Ocean on the
12 GEBCO grid which, as I explained, is a global compilation of the available data,
13 which is publicly accessible and can be downloaded from the Internet for any part of
14 the world through a web portal. GEBCO forms the basis, and background, of the
15 maps presented by both Mauritius and the Maldives, including many of those shown
16 by Dr Badal on Monday. Satellite altimetry-derived bathymetric data is utilized in the
17 GEBCO grid only where there is no measured bathymetry available; that is to say
18 single-beam or multi-beam echosounder data.

19
20 A crucial point is how the CLCS differentiates satellite altimetry-derived data from
21 other methods of collecting data, such as single beam and multibeam echosounder
22 data. In circumstances such as that of the present case, where the asserted path is
23 not a straightforward prolongation of the landmass, paragraph 4.2.6 of the CLCS
24 Guidelines, notes that

25
26 satellite altimetry-derived bathymetric data ... will not be regarded as
27 admissible for the purpose of delineating the 2,500 m isobath. This
28 information, however, might be useful as additional qualitative information
29 in support of other parts of a submission but will not be considered during
30 the determination of this or any other isobaths.³⁶

31
32 Mr President, the text is absolutely clear. Satellite data is insufficient; it will not be
33 considered by the CLCS to determine ocean depth and structure – without which
34 natural prolongation cannot be ascertained.

35
36 Mr President, with your permission, I will further explore the application of
37 article 4.2.6 just cited of the CLCS Guidelines to the present case. You will recall
38 Dr Badal's figure showing Seychelles' Northern Plateau Region, which appears as
39 Annex 20 of the Maldives' Rejoinder and is referred to in footnote 287. He said in
40 particular that the "elevated region" on which Mauritius relies in the present case is
41 "part of the continental shelf in the same manner as recognized by the CLCS when it
42 considered similar circumstances in the Submission concerning the Seychelles
43 Northern Plateau Region".³⁷ Those were his words. We agree with Dr Badal that this

³⁵ Robert D. Ballard, "Why We Must Explore the Sea", *Smithsonian Magazine*, October 2014
<<https://www.smithsonianmag.com/science-nature/why-we-must-explore-sea-180952763/>> accessed 17 October 2022.

³⁶ United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, "Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf", 13 May 1999, Doc CLCS/11, para. 4.2.6.

³⁷ ITLOS/PV.22C28/2, p. 15 (lines 33–36) (Badal).

1 is indeed a useful illustration of CLCS practice, especially in similar circumstances to
2 Mauritius' claim where the asserted submerged prolongation, unlike that of the
3 Maldives, was not obvious; but it proves the exact opposite of what Dr Badal said.
4 What is most important for present purposes is the standard of evidential data
5 required by the CLCS in the case of Seychelles' submission.
6

7 Let us examine the 2018 CLCS recommendations to Seychelles in the Northern
8 Plateau Region³⁸ more closely. The Parties are in apparent agreement that the
9 CLCS considered a similar morphological question. The Seychelles sought to
10 establish its natural prolongation along the path depicted by the red arrow on the
11 upper-left map, so that it could come from its landmass along ridge-like features to
12 the critical foot of slope point (FOS-1). The data included in the Seychelles'
13 submission is depicted in the bottom-left map; as you can see, it included both
14 significant single-beam data (marked in orange) as well as multibeam data (marked
15 in green). Nonetheless, during its consideration of the Seychelles' submission, the
16 relevant CLCS subcommission was concerned by the fact that "the natural
17 prolongation coming from the land mass to the critical foot of slope point could not be
18 established based on the spatial coverage of the bathymetric data available."³⁹ To
19 address this measured bathymetric data deficiency, the Seychelles acquired and
20 subsequently submitted targeted multibeam bathymetric data during the CLCS
21 examination process. The area covered by that additional data is highlighted in
22 yellow on the lower-right map. It was only after gathering this additional high-
23 resolution data that the Seychelles was able to successfully demonstrate natural
24 prolongation. None of this was mentioned by Dr Badal on Monday.
25

26 Keeping the example of the Seychelles in mind, let us now turn to the measured data
27 available to Mauritius in the Gardiner Seamounts, as can be observed from this map
28 of data sources from the International Hydrographic Organization. The orange lines
29 represent the tracks of ships that have taken single beam data, some from the 1950s
30 with little accuracy; the green lines represent the tracks where more precise
31 multibeam data has been collected in more recent years. Where there are no lines, it
32 means that the only available data has been derived from satellite altimetry. You can
33 clearly see that the bathymetry of the vast majority of this area is mapped from
34 satellite altimetry-derived data; thus, it is at best a rough estimate of isobaths of the
35 ocean floor.
36

37 If we zoom in even closer and look at the specific area of the Gardiner Seamounts
38 upon which Mauritius' entire theory rests, we see that the data is completely non-
39 existent. Here you see the isolated ridges, straddling the Chagos Trough. There is
40 not a single ship track, whether single beam or multibeam. There is nothing at all that
41 the CLCS would consider as evidence of natural prolongation. It is, with the greatest
42 respect, blindingly obvious that the CLCS would not establish any entitlement on this
43 basis. It is unsurprising that Dr Badal never pointed to the available data for this
44 area, because the Special Chamber would then see that there is in fact no evidence

³⁸ Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, 27 August 2018.

³⁹ Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, Approved by the Commission on 27 August 2018, para. 35.

1 whatsoever that Mauritius could invoke in support of its position. That is perhaps why
2 they are eager for you to substitute the CLCS process, because they know that their
3 claim, invented for litigation purposes, will definitely be rejected.

4
5 Here, is a simple comparison of the Seychelles' data with that of the Gardiner
6 Seamounts region, indicated by red circles. On the left, we have the Seychelles' data
7 coverage from before it obtained additional data – a significant web of ships' tracks. I
8 remind you that the CLCS considered even this data to be insufficient for the
9 Seychelles. On the right, you have the data available for the Gardiner Seamounts. It
10 does not require an expert opinion to see the difference between the two. The key
11 point here is that the CLCS, let alone this Special Chamber, could not possibly
12 accept Mauritius' submission on the basis of the data available. The Seychelles
13 precedent that Dr Badal referred to is in fact a perfect illustration of why Mauritius'
14 case will obviously fail.

15
16 I note in passing that Dr Badal sought to create the impression that the Gardiner
17 Seamounts theory was also supported by bathymetric data. He showed this graphic,
18 and described the dashed white line as a “composite of single beam bathymetric
19 profiles of the NGDC”.⁴⁰ But as we have just seen, it cannot be. There is, to the best
20 of our knowledge, no data there. This is simply a dashed line drawn over the
21 proposed submerged prolongation Mauritius has alleged. It is not supported by any
22 data whatsoever.

23
24 If this Chamber were to find that Mauritius has an entitlement, contrary to the CLCS
25 Guidelines, and contrary to its practice, it would create an unfortunate situation
26 where the CLCS would almost certainly issue recommendations contrary to the
27 judgment of this Chamber. It is with good reason that the practice of ITLOS is not to
28 delimit the outer continental shelf where there is significant uncertainty as to the
29 existence of entitlement.

30
31 Mr President, in this presentation I have only touched on aspects of Mauritius' claim
32 to demonstrate its obvious deficiencies. If Mauritius' claim was properly within the
33 jurisdiction of the Chamber and otherwise admissible, and if it had otherwise put
34 forward its case in full in its Memorial, rather than this Monday in Dr Badal's
35 testimony, it would be possible to provide yet more details of its fundamental flaws.
36 But that is not necessary because, as I have just explained, Mauritius has not even
37 made a *prima facie* case; there is simply no case for the Maldives to answer.

38
39 The point is that if the Chamber delimits the maritime boundary with a directional line
40 from point 46 as proposed by the Maldives, there would be no injustice to Mauritius,
41 because its claim is simply unarguable. If, on these facts, Mauritius has entitlement,
42 then anything is possible.

43
44 Mr President, Mauritius invites you to make history by substituting the CLCS
45 process; but as Dr Ballard would remind us, the wreck of the Titanic on the ocean
46 floor is also part of history. It would be a deeply unfortunate precedent if, having
47 substituted the rigorous CLCS process for a quick solution, this Chamber were to
48 find its decision contradicted by that expert body.

⁴⁰ ITLOS/PV.22C28/2, p. 15 (lines 15–16) (Badal).

1
2 Mr President, that concludes my speech. I thank you for your patience and now ask
3 that you give the podium to Ms Sander, possibly after the break – I do not know if
4 this is an appropriate time or not – who will conclude the Maldives’ first-round
5 pleadings.
6

7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Akhavan. I now
8 give the floor to Ms Sander to make her statement.
9

10 **MS SANDER:** Mr President, Members of the Chamber, it is an honour to address
11 you again on behalf of the Republic of Maldives in these proceedings.
12

13 Dr Hart, Professor Mbengue and Professor Akhavan have addressed three distinct
14 reasons why Mauritius’ new claim to an OCS is outside this Chamber’s jurisdiction
15 and otherwise inadmissible.
16

17 The purpose of this part of the Maldives’ pleadings is to address the fourth and final
18 reason as to why the Chamber should not exercise jurisdiction over this part of
19 Mauritius’ claim. That is, that Mauritius’ proposed delimitation of the Parties’
20 overlapping OCS necessarily requires prior delineation of the outer limits and
21 therefore encroaches on the mandate of the CLCS.
22

23 To further demonstrate the flaws of Mauritius’ proposed delimitation of the Parties’
24 purported overlapping OCS claims, I will then explain why its approach – asking the
25 Chamber to jettison the continuation of the equidistance line pursuant to the three-
26 step methodology in favour of an arbitrary “slicing of the pie” – should in any event
27 be rejected.
28

29 Turning then to the fourth and final objection to Mauritius’ request that the Chamber
30 delimit the Parties’ overlapping OCS claims, the starting point is the role of the
31 CLCS, a body which, to use Mauritius’ own words, has a “specialised expertise”.¹
32 Professor Akhavan has made observations in this regard already and I wish to
33 highlight two key points that are in essence sides of the same coin.
34

35 The first is that it is for the CLCS to make recommendations regarding delineation of
36 the outer limits of the continental shelf.
37

38 UNCLOS article 76, paragraph 8, provides that following the submission by a coastal
39 State to the Commission,
40

41 [t]he Commission *shall* make recommendations to coastal States on
42 matters related to the establishment of the outer limits of their continental
43 shelf. The limits of the shelf established by a coastal State on the basis of
44 these recommendations shall be final and binding.²
45

46 What the functions of the Commission “shall be” is confirmed in Annex II of
47 UNCLOS, which provides at article 4 that “where a coastal State intends to establish,
48 in accordance with article 76, the outer limits of its continental shelf beyond 200 nm,

¹ Memorial of the Republic of Mauritius (“MM”), para. 4.63.

² UNCLOS Article 76, para. 8 (emphasis added).

1 it shall submit particulars of such limits to the Commission” and at article 3 that the
2 Commission’s function shall be to consider that material and “make
3 recommendations”.

4
5 So, in brief, it is for the Commission to make recommendations as to the outer limits
6 of a continental shelf. As the ICJ recently observed,

7
8 [i]t is only after such recommendations are made [by the Commission] that
9 [the coastal State] can establish final and binding outer limits of their
10 continental shelves, in accordance with article 7, paragraph 8, of
11 UNCLOS.³

12
13 Flipping the coin over as it were, the second and related point is that, as articulated
14 by the tribunal in *Bangladesh v. Myanmar* is that

15
16 the exercise by international courts and tribunals of their jurisdiction
17 regarding the delimitation of maritime boundaries, including that of the
18 continental shelf, is without prejudice to the exercise by the Commission of
19 its functions on matters related to the delineation of the outer limits of the
20 continental shelf.⁴

21
22 So the respective mandates of a tribunal with respect to delimitation and the
23 Commission with respect to delineation must complement, not conflict with, one
24 another. Consistent with that imperative, as Professor Akhavan has explained,
25 international courts and tribunals do not exercise jurisdiction where there is
26 “significant uncertainty” as to entitlement, given the role of the Commission in this
27 regard.

28
29 It is no answer for Mauritius to refer to a “freezing” of the CLCS process “due to the
30 filing of an objection”.⁵ To the extent that there is such a “freezing”, it is certainly not
31 the Maldives that is the ice queen. As the Maldives’ Agent has clarified, the Maldives
32 has filed no objection, and Mauritius’ 2011 protest is in its gift to withdraw so there
33 can be no impediment to the process properly unfolding before the Commission.

34
35 So how does Mauritius invite the Chamber to delimit the boundary with respect to
36 what it asserts are overlapping OCS claims? Its approach is to ditch the well-
37 established three-step methodology that I referred to yesterday and simply take the
38 area of what it claims are overlapping OCS claims and cut it down the middle.⁶

39
40 Fundamental to that proposal is the premise of an “equal share”.⁷ Mauritius says the
41 overlapping OCS area should be simply, and I quote here, “divide[d] in equal parts”,⁸

³ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 188.

⁴ *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379.

⁵ ITLOS/PV.22/C28/2, p. 31 (lines 8–11) (Loewenstein). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

⁶ MM, para. 4.77; Reply of the Republic of Mauritius (‘MR’), para. 4.25.

⁷ MM, para. 4.49.

⁸ MM, para. 4.77.

1 with a “line of equal division”⁹ that results in a mathematically precise “equal
2 apportionment of the area”.¹⁰ So, according to Mauritius, the overlapping OCS area
3 is to be divided up with exactly 11,136 square kilometres each.¹¹

4
5 So it is clear that Mauritius’ “line of equal division”¹² of 11,136 square kilometres
6 each is premised on a particular delineation of the Parties’ respective OCS claims.
7 For Mauritius’ approach of slicing up the geographical pie, this requires this Chamber
8 to determine the contours of its crust!

9
10 Yet such delineation of outer limits cannot be undertaken independently of a
11 recommendation of the CLCS. Mauritius’ methodology depends on assuming what
12 that recommendation from the CLCS will be, and that would be an encroachment on
13 the function of the CLCS.

14
15 Put another way, if ultimately there is a different delineation of the parties’ outer limits
16 following the Commission’s recommendations, then the “equal share” rug is pulled
17 from under the Parties’ feet. The “line of equal division” would no longer be equal.

18
19 Indeed, in the present proceedings, already two adjustments have become
20 necessary with respect to Mauritius’ OCS claim.

21
22 First, in its Reply, Mauritius changed what it says is the total area which is to be
23 divided between the Parties.¹³ For the Chamber’s reference, the change is noted at
24 para. 4.3 of Mauritius’ Reply.

25
26 That adjustment did not take into account a second and further adjustment that is
27 necessary in light of its survey. As I explained yesterday, the outer limit of Mauritius’
28 claimed OCS must be recalculated using baselines correctly drawn from low-tide
29 elevations within 12 nm of the nearest island. To achieve its so-called “equal
30 division” therefore requires another re-drawing of the line.¹⁴

31
32 Mauritius may well seek to attempt to downplay these two adjustments as *de minimis*
33 but that is no answer to the point of principle. What is more, we have no crystal ball
34 as to what the delineation will be following a recommendation from the CLCS and
35 whether that will only involve only *de minimis* adjustments. It of course cannot be
36 assumed that the Commission will adopt any State’s submission, and there are
37 specific instances where the Commission has concluded that the evidence submitted
38 was insufficient – Professor Akhavan has already referred to the Seychelles’
39 submission in this regard.¹⁵ That warning is all the more apposite in circumstances

⁹ MR, Figure R4.6.

¹⁰ MR, para. 4.25.

¹¹ MR, Figure R4.6 (reproduced in Mauritius’ Judges’ Folder, (Loewenstein-1) Figure 7).

¹² MR, Figure R4.6.

¹³ MR, para. 4.3, footnote 183.

¹⁴ MR, footnote 211, in conjunction with para. 4.5.

¹⁵ Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, 27 August 2018, paras. 10, 35–37

<https://www.un.org/Depts/los/clcs_new/submissions_files/syc39_09/2018_08_27_COM_SUMREC_SYC.pdf> accessed 17 October 2022.

1 where Mauritius' submission is presented without the relevant supporting technical
2 evidence, as we have just heard from Professor Akhavan. In this instance, it is
3 obviously the case that there is, at the very least, significant doubt as to whether
4 Mauritius has any entitlement at all, with the possible consequences that the CLCS
5 will find Mauritius has no entitlement.

6
7 In fact, it was Monday that was the first time that we heard Mauritius' substantive
8 response on this fundamental objection, i.e. the objection that Mauritius' proposed
9 delimitation of the Parties' purported overlapping OCS necessarily requires prior
10 delineation of the outer limits and therefore encroaches on the mandate of the
11 Commission. As noted in the Maldives' Rejoinder, no answer to the issue has been
12 advanced in Mauritius' written pleadings, despite the Maldives having raised this
13 objection in its Counter-Memorial.¹⁶ It is not clear to the Maldives why Mauritius only
14 substantively answered the objection some 72 hours ago.

15
16 So what did Mauritius say? Well, not much. There seemed to be two aspects to its
17 rather brief response.

18
19 First, it says that "the absence of a delineation by the CLCS has not prevented
20 courts or tribunals from establishing the boundary beyond 200 M by means of a
21 directional line", asserting that "the fact that the precise dimensions of the area has
22 not yet been determined" is no impediment to the delimitation.¹⁷

23
24 The Maldives agrees, as noted in both of its written pleadings, that yes, in certain
25 circumstances an absence of delineation will not prevent delimitation from
26 occurring.¹⁸ That is the case where a future delineation will not be prejudiced by a
27 delimitation.

28
29 But the point is that the absence of delineation is an impediment to the delimitation
30 proposed by Mauritius. As I explained at the start of my submission, the premise of
31 Mauritius' approach is of a precise equal share and so determination of "the precise
32 dimensions of the area" to be divided is key. Given the Commission might well
33 delineate the outer limits of the continental shelf differently to how Mauritius
34 contends that it should, the directional line would risk then not achieving the
35 mathematical split on which Mauritius' whole approach is based.

36
37 Mr Loewenstein later said that "even if the outer limits were to be adjusted closer or
38 farther away, the 55 degree azimuth would still divide the overlapping OCS
39 entitlements equally."¹⁹ He didn't elaborate this submission but, as advanced, this
40 seems clearly incorrect. If there is a change in the size and shape of the area to be
41 divided, then retaining the same fixed azimuth would result in unequal portions being
42 given to each side.

43
44 The second part of their response as we understand it is that Mauritius asserts that
45 "[the] Maldives does not dispute that the limits of the Mauritian outer continental shelf

¹⁶ Rejoinder of the Republic of Maldives ("MRJ"), paras. 10 and 139.

¹⁷ ITLOS/PV.22/C28/2, p. 27 (line 41) – 28 (line 3) (Loewenstein).

¹⁸ Counter-Memorial of the Republic of Maldives ("MCM"), paras. 87–89; MRJ, paras. 137(b), 139.

¹⁹ ITLOS/PV.22/C28/2, p. 31 (lines 22–24) (Loewenstein).

1 claim fall along the line described in Mauritius' Submission to the CLCS".²⁰ I am
2 citing there from the Monday pleading. In fact, the Maldives does dispute the entirety
3 of Mauritius' OCS claim, including its limits. If the Commission were to agree with the
4 Maldives, then the delimitation line proposed by Mauritius would purport to grant to
5 Mauritius half of an area in which it has no entitlement at all. Equally critically, quite
6 apart from the Maldives' position, the Commission may not recommend that the
7 limits of the Mauritian outer continental shelf claim fall along the line described in
8 Mauritius' submission to the Commission.

9
10 Mr President, I am moving now to the second part of my submission, which is a
11 straight run of 40 minutes. Would now be a convenient time to take a morning
12 break?

13
14 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Sander. Then the
15 Special Chamber will withdraw for a break of 30 minutes and the hearing will be
16 resumed at quarter to noon.

17
18 *(Break)*

19
20 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Ms Sander, you have the floor.

21
22 **MS SANDER:** Thank you, Mr President.

23
24 The Maldives' admissibility objection concerning "delimitation presupposing the
25 outcome of delineation" that I addressed before the break arises from Mauritius'
26 proposed approach for delimitation from with respect to the Parties' purported
27 overlapping OCS claims. In this second part of my submission, I explain why that
28 approach – an arbitrary "slicing of the pie" – is flawed. For the avoidance of doubt,
29 the Maldives' position is that to proceed with a delimitation of the Parties' purported
30 overlapping OCS claims is outside this Chamber's jurisdiction and inadmissible. But
31 to fully demonstrate the flaws of Mauritius' case as a matter of jurisdiction and
32 admissibility, it is necessary for me to step into their fantasy world for a moment, to
33 follow the rabbit down the hole to Wonderland.

34
35 As a starting point, it is helpful to ... well, identify the starting point. I leap here from
36 Alice in Wonderland here to the hills of Salzburg: "Let's start from the very beginning;
37 it's a very good place to start."

38
39 It is of course common ground that the three-step methodology is not mandatory. On
40 Monday, Mr Loewenstein took us through a series of cases, highlighting the
41 importance of achieving an equitable solution in light of the particular circumstances
42 of the case.²¹ Fine, and I will come to the particular circumstances of the case
43 shortly. What I begin by doing is highlighting four further points that are also clear
44 from the jurisprudence.

45
46 First, it is an equitable solution "on the basis of international law" that is mandated by
47 article 83, paragraph 1, of UNCLOS, and international law is clear that "equity does

²⁰ ITLOS/PV.22/C28/2, p. 28 (lines 8–10) (Loewenstein).

²¹ Mauritius' Judges' Folder, (Loewenstein-1) Figure 8–(Loewenstein-1) Figure 16.

1 not necessarily imply equality”.²² Mauritius’ argument depends on the overlapping
2 continental shelf entitlements “being delimited by means of a line that apportions an
3 equal share to each Party”.²³ Yet, as expressly and repeatedly affirmed by the ICJ,
4 “[t]he object of delimitation is to achieve a delimitation that is equitable, not an equal
5 apportionment of maritime areas.”²⁴ The Tribunal in the *Newfoundland Nova Scotia*
6 arbitration observed that “dividing up of offshore areas on a strict mathematical basis
7 [is] a procedure which the International Court has consistently denied is required by
8 equitable principles”.²⁵

9
10 That is my first point.

11
12 Second, whilst simply dividing areas into equal shares has been expressly rejected
13 in the case law, the three-step methodology, by contrast, is well-established in the
14 jurisprudence and it meets two important objectives in achieving equitable
15 delimitations.

16
17 On the one hand it provides sufficient flexibility to accommodate the circumstances
18 of individual cases. The three-step methodology has an inbuilt fact-specific
19 assessment; there may be an adjustment of a provisional equidistance line in light of
20 the circumstances of the case and there is the further cross-check for gross
21 disproportionality.

22
23 On the other hand, the three-step methodology ensures coherence and
24 predictability, minimising arbitrariness of approach.

25
26 Thus, the Tribunal in *Bangladesh v. India* emphasized “transparency and the
27 predictability of the delimitation process as a whole” as an important objective.²⁶ This
28 chimes with an early statement of the Tribunal in *Barbados v. Trinidad and Tobago*
29 that

30
31 [t]he need to avoid subjective determinations requires that the method used
32 start with a measure of certainty that equidistance positively ensures,
33 subject to its subsequent correction if justified. A different method would
34 require a well-founded justification.²⁷

35
36 Third, reflecting the fact that the three-step methodology meets such important
37 objectives, there is in practice a presumption that the three-step methodology will
38 apply to maritime delimitation, grounded in the need to ensure transparency and
39 predictability.

²² *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 at pp. 39–40, para. 46; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 172.

²³ MM, para 4.49, (emphasis added).

²⁴ *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 3 at p. 69, para. 193, citing *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61 at p. 100, para. 111, (emphasis added).

²⁵ *Arbitration between Newfoundland and Labrador and Nova Scotia Concerning Portions of the Limits of their Offshore Areas*, Award of the Tribunal in the Second Phase, 2002, para. 5.6.

²⁶ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 339.

²⁷ *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 306.

1 As I noted yesterday, we see the ICJ recently in *Somalia v. Kenya* asking whether
2 there was a “reason in the present case to depart from its usual practice of using the
3 three-stage methodology to establish the maritime boundary between Somalia and
4 Kenya in the exclusive economic zone and on the continental shelf”.²⁸

5
6 On Monday, Mauritius itself cited a paragraph from *Ghana v. Côte d’Ivoire* where
7 ITLOS stated that

8
9 international jurisprudence confirms that, in the absence of any compelling
10 reasons that make it impossible or inappropriate to draw a provisional
11 equidistance line, the equidistance/relevant circumstances methodology
12 should be chosen for maritime delimitation.²⁹

13
14 So, a compelling reason making it impossible or inappropriate would be required for
15 an international court or tribunal to depart from the three-step methodology. We know
16 the construction of the equidistance line in this case is not “impossible” — both
17 parties seem to agree on this – and we also know that the mere fact that there is not
18 an equal apportionment does not make it “inappropriate” – and I have referred to the
19 case law on that.

20
21 The fourth point I wish to draw from the jurisprudence is that, consistent with the
22 presumption I have referred to and the concern for coherence and predictability, all
23 cases to date have applied the same methodology within and beyond 200 nm.

24
25 Thus in *Bangladesh v. Myanmar*, ITLOS stated:

26
27 [T]he delimitation method to be employed in the present case for the
28 continental shelf beyond 200nm should not differ from that within 200nm.
29 Accordingly, the equidistance/relevant circumstances method continues to
30 apply for the delimitation of the continental shelf beyond 200nm.³⁰

31
32 *Bangladesh v. India*, the Tribunal confirmed:

33
34 The Parties and the Tribunal agree that there is a single continental shelf.
35 The Tribunal considers that the appropriate method for delimiting the
36 continental shelf remains the same, irrespective of whether the area to be
37 delimited lies within or beyond 200nm. Having adopted the
38 equidistance/relevant circumstances method for the delimitation of the
39 continental shelf within 200nm, the Tribunal will use the same method to
40 delimit the continental shelf beyond 200nm.³¹

28 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 131.

29 *Delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, 23 September 2017, para. 289 (emphasis added here), cited by ITLOS/PV.22/C28/2, p. 24 (lines 37–39) (Loewenstein).

30 *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 455.

31 *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 465.

1 *Ghana v. Côte d'Ivoire*, the Chamber observed:

2
3 As far as the methodology for delimiting the continental shelf beyond
4 200nm is concerned, the Special Chamber recalls its position that there is
5 only one single continental shelf. Therefore it is considered inappropriate
6 to make a distinction between the continental shelf within and beyond
7 200nm as far as the delimitation methodology is concerned.³²

8
9 *Somalia v. Kenya*: there, the Court considered it

10
11 appropriate to extend the geodetic line used for the delimitation of the
12 exclusive economic zone and the continental shelf within 200nm to delimit
13 the continental shelf beyond 200nm ... until it reaches the outer limits of
14 the Parties' continental shelves which are to be delineated by Somalia and
15 Kenya, respectively, on the basis of the recommendations to be made by
16 the Commission or until it reaches the area where the rights of third States
17 may be affected.³³

18
19 Against that backdrop, and recalling that the equitable solution mandated by
20 article 83, paragraph 1, of UNCLOS is one that must be "on the basis of international
21 law", the Maldives urges the Chamber to consider carefully the need for consistency
22 of approach, meeting the undisputed imperative of transparency and predictability.
23 That need to ensure transparency and predictability is not to be lightly glossed over
24 as a mere high-level aspiration or peripheral consideration. The delimitation of the
25 continental shelf beyond 200 nm is – and will increasingly be – of interest for States,
26 noting the large number of submissions before the CLCS (some 93 at our last count)
27 as well as submissions in the pipeline. Of course, it is also of critical importance for
28 coastal States in the process of negotiating boundaries with nearby coastal States,
29 with both sides inevitably looking to judgments of international courts and
30 international tribunals to guide them in what would be equitable in the circumstances
31 of their case. So, against that backdrop, the imperative of the consistency and
32 coherence of the jurisprudence – all of which currently confirms a common approach
33 to maritime delimitation within and beyond 200 nm and a presumptive application of
34 the three-step methodology – is significant.

35
36 So, it seems in fact to be common ground that the real question here is as follows: is
37 there a reason not to apply the three-step methodology – continuing the equidistance
38 line – to the delimitation beyond 200 nm in the circumstances of this case?

39
40 One reason presented by Mauritius for disregarding all the prior cases I have cited
41 applying the same methodology within and beyond 200 nm is that those cases
42 concerned "adjacent States" and this case concerns "opposite States".³⁴
43 Mr Loewenstein acknowledged that "[t]here may be circumstances in which
44 equidistance can still usefully serve as an appropriate starting-point, such as where
45 the geographical context is one of adjacency." He continued:

³² *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 526.

³³ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 195–196.

³⁴ MM, para. 4.69.

1 This was the situation in prior delimitation cases where courts or tribunals
2 were called upon to delimit the continental shelf beyond 200 nm. In all those
3 cases, the two parties were adjacent States, and the extension of the
4 delimitation line within 200 nm along the same azimuth made logical sense.
5

6 But, so he says, “Not so here, where Mauritius and Maldives are opposite States”.³⁵
7

8 But this observation deserves some unpicking.
9

10 There is on the one hand the question of the configuration of the coastlines, which
11 may be opposite or adjacent. The Tribunal in *Barbados v. Trinidad and Tobago*
12 observed with reference to the applicable law under UNCLOS that “there is no
13 justification to approach the process of delimitation from the perspective of a
14 distinction between opposite and adjacent coasts”.³⁶ So as an abstract point of
15 distinction, the fact that two States have opposite or adjacent coastlines does not
16 assist this Tribunal when it comes to the process of delimitation; and, as I will explain,
17 considering this point of distinction on the facts of this case similarly does not move
18 things forward. That is coasts.
19

20 There is, on the other hand, the question of the configuration of the continental
21 margins, which again may be opposite or adjacent. So we see on the screen now an
22 example of where the coastlines of State A (on the left) and State B (on the right) are
23 opposite. Their 200 nm limit is denoted by the dark yellow shading delineated by the
24 black line. Their respective OCS claim is indicated by the paler yellow shading
25 delineated by the red line. Here the continental margin is, as with the coastlines,
26 opposite, with those opposite margins meeting in the middle with a small area of
27 overlap.
28

29 But it is possible for the coastlines to be opposite while the continental margins sit in
30 a position of adjacency. This is shown in the three graphics on the screen, which I am
31 going to talk through in turn.
32

33 If we look first at the left-hand side, this is the graphic showing State A, marked in a
34 blue colour, and State B, as adjacent States. Their 200 nm limit is denoted by the
35 dark yellow shading delineated by the black line. Their OCS claim is indicated by pale
36 yellow shading delineated by the red line. So here we have adjacent coastlines with
37 continental margins also sitting in a position of adjacency.
38

39 I move now to the graphic in the middle of the screen. This is a graphic this time
40 showing State A and State B as islands with opposite coasts; but, again, with their
41 200 nm limit denoted by the black line and their OCS limit indicated by the red line.
42 So here we have opposite States, but their continental margins are still sitting in a
43 position of adjacency.
44

45 On the right side is the graphic similarly showing State A and State B as islands with
46 opposite coasts and their continental margins still sitting in a position of adjacency,
47 but with the majority of the continental margin proximate to the coastline of State A.
48

³⁵ ITLOS/PV.22/C28/2, p. 26 (lines 6–15) (Loewenstein).

³⁶ *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 315.

1 So in all three examples, the States' continental margins are sitting in a position of
2 adjacency.

3
4 Indeed, this right-hand graphic, broadly, reflects the position here. The coastlines of
5 the Parties are indeed opposite. But when it comes to the OCS in this case the
6 configuration is different – it is one of adjacency. I remind the Chamber that I am still
7 in Wonderland here: the Maldives' case is that Mauritius has no entitlement to an
8 OCS. But assuming they do, *quod non*, Mauritius' case is that “there is a single
9 physical shelf in the area, a portion of which is claimed by both parties”.³⁷ The
10 purpose of this slide is to show the irrelevance of Mauritius' observation in this case
11 that the Parties' coasts are opposite rather than adjacent. On the more pertinent
12 issue of the configuration of their continental margins, the situation in this case is the
13 same as in previous cases: the continental margins are adjacent.

14
15 And, it is recalled that Mr Loewenstein conceded that “where the geographical
16 context is one of adjacency” then “equidistance can still usefully serve as an
17 appropriate starting-point”.³⁸ Consistent with that acknowledgment and consistent
18 with all the previous cases to which I have referred, the Maldives' case is that
19 equidistance is the appropriate starting point with respect to the purportedly
20 overlapping OCS claims, and the Chamber should continue the equidistance line.

21
22 Another reason advanced by Mauritius for not applying the same methodology within
23 and beyond 200 nm is its complaint that, in essence, “but continuing the equidistance
24 line means we (Mauritius) are cut off from our OCS entitlement”.³⁹

25
26 By way of preliminary observation, of course, this is not a “cut off” in the sense of
27 Mauritius being wedged in without access to the wider Indian Ocean, and Mauritius
28 would have still of course its 1,100 square kilometres of OCS, which it has identified
29 to the east of the area of overlapping OCS claims as only claimed by Mauritius.

30
31 But the more important point here is that, as stated by the Tribunal in *Bangladesh v.*
32 *India*,

33
34 international jurisprudence on the delimitation of the continental shelf does
35 not recognise a general right of coastal States to the maximum reach of
36 their entitlements, irrespective of the geographical situation.⁴⁰

37
38 It may well be that, in light of the geographical situation, a State is not awarded the
39 full entitlement of OCS that would receive if there were no other State nearby.

40
41 Thus in the Bay of Bengal cases, the final delimitation lines adopted by ITLOS and
42 the Annex VII tribunal stopped Bangladesh's continental shelf by over 100 nm short
43 of the outer limit of the entitlement it had claimed in its submission before the
44 Commission. I refer to the graphic now on your screen. This is the Bay of Bengal,
45 with dark black lines indicating Bangladesh's 200 nautical mile limit and its OCS

³⁷ MR, para. 4.14.

³⁸ ITLOS/PV.22/C28/2, p. 27 (lines 6–8) (Loewenstein).

³⁹ ITLOS/PV.22/C28/2, p. 22 (lines 36–37) (Loewenstein); ITLOS/PV.22/C28/2, p. 28 (lines 24–26) (Loewenstein).

⁴⁰ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 469 (emphasis added).

1 submitted to the CLCS. So the area we see here in yellow shows the area of OCS
2 claimed by Bangladesh. In the next graphic we see marked in green the area of OCS
3 awarded to Bangladesh by application of an adjusted equidistance line. In the final
4 graphic, the Chamber will see marked in red the area of its OCS that Bangladesh
5 was cut off from. The area of OCS awarded to Bangladesh we calculate as being
6 less than 18 per cent of what it in fact claimed.
7

8 The key point is that, as noted by the Court in *Somalia v. Kenya*, “the potential cut-off
9 of [a State’s] maritime entitlements should be assessed in a broader geographical
10 configuration”.⁴¹ And here the cut off identified by Mauritius is a reflection of the
11 geographical configuration.
12

13 This merits further elaboration, and so it is to this geographical configuration I now
14 turn.
15

16 It is helpful to begin by setting the scene. On the screen is a map showing Mauritius’
17 mainland, the Chagos Archipelago and the Maldives, with Mauritius’ OCS claim (both
18 in the southern and, as now claimed, the northern region) shaded in pink.
19

20 If we now zoom in to Mauritius’ OCS claim in the northern region, it is this pink area
21 that it says is overlapping with the Maldives’ OCS claim, and we see the 350 nm limit
22 it has drawn pursuant to UNCLOS article 76, paragraph 5, marked by the white lines
23 drawn from Blenheim Reef.
24

25 It is this pink overlapping area that Mauritius proposes to simply slice into two equal
26 shares.
27

28 What is clear from the graphic is the proximity of what Mauritius is claiming to be its
29 OCS to the Maldives’ coastline. This is not in dispute – Mauritius has itself expressly
30 conceded that the extended shelf that Mauritius claims – and I quote from its
31 Memorial, “lies in closer proximity to Maldives’ coast than to that of Mauritius”.⁴² As
32 the figure shows, the distance from the Maldives’ land territory to the furthest point on
33 the outer limit of its OCS claim is just 25 nm – almost 100 nm closer than that of
34 Mauritius.
35

36 This geographical reality is also reflected in the length of the Parties’ respective
37 200 nm lines “edging” or abutting the (purportedly) overlapping OCS claims. These
38 shared “edges” are marked in green on the graphic we are looking at. For the
39 Maldives this is a long perimeter of some 290 km. For Mauritius it is just over 30 km.
40 So the coastal “frontage” is vastly different.
41

42 The Maldives’ proposal of a continuation of the equidistance line would reflect the
43 geographical reality. To the charge that the equidistance line does not divide the
44 Parties’ overlapping OCS entitlements,⁴³ it is recalled that the line does divide the
45 Parties’ continental shelf, noting there is in law one single continental shelf, with
46 Mauritius having continental shelf on its side of the equidistance line, albeit within

⁴¹ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 167.

⁴² MM, para. 4.72.

⁴³ ITLOS/PV.22/C28/2, p. 21 (lines 6–15) (Loewenstein).

1 200 nm. The area of outer continental shelf on the Maldives' side of the equidistance
2 line would simply be a function of the physical shape of the continental margin.

3
4 By stark contrast, Mauritius' proposed line of delimitation would completely ignore
5 this geographical reality – it would in effect refashion geography, denying the reality
6 of proximity to the Maldives' coast supported by the far longer coastal frontage, in
7 favour of an abstract measure of so-called “equal division”.

8
9 Presumably recognizing the unavoidable geographical reality in this case, Mauritius
10 attempts to dismiss entirely the relevance of “coastal configuration”.⁴⁴ The Maldives
11 does not accept that simply because one has turned to the issue of delimitation of the
12 continental shelf beyond 200 nm that this exercise can be considered in a vacuum,
13 without reference to the “coastal configuration”, specifically the margin's position with
14 respect to the Maldives' coastline. This is for two reasons.

15
16 Firstly, to automatically dismiss geographical configuration with respect to
17 delimitation beyond 200 nm is at odds with the jurisprudence, and I have already
18 noted that the equitable solution mandated by article 83 of UNCLOS is one that must
19 be “on the basis of international law”. It is well established that through the process of
20 delimitation there must be “no question of refashioning geography, or compensating
21 for the inequalities of nature”, and that “the method chosen and its results must be
22 faithful to the actual geographical situation”.⁴⁵ As Mauritius itself expressly observed
23 on Monday, the method to be followed should be one that has regard to the
24 “prevailing geographic realities”,⁴⁶ one that is “geometrically objective and also
25 appropriate for the geography of the area”.⁴⁷

26
27 Let us take *Ghana v. Côte d'Ivoire*. Yes, the States had adjacent coastlines (unlike
28 this case), but the continental margin lay in an adjacent orientation, just like in this
29 case.

30
31 The graphic now on the screen shows in green, at the top, the land territory of Côte
32 d'Ivoire to the left and Ghana to the right. The yellow line you see towards the bottom
33 of the screen shows the Parties' respective 200 nm lines, with the red line below that
34 denoting the outer limits of the continental shelf claimed by each State. The area
35 between the yellow and red line shows the overlapping OCS areas. The Chamber in
36 that case determined an equidistance line, that you can see marked by the white
37 dash line, that continued both within and beyond 200 nm. It is clear from that white
38 dashed line, the equidistance line determined by the Chamber, that a slightly larger
39 area was awarded to Côte d'Ivoire. This reflected the physical shape of the
40 continental margin which lay in closer proximity to Côte d'Ivoire's coastline. What the
41 Chamber did not do was simply split the overlapping OCS in two; if it had done, the
42 delimitation line would have been that indicated by the orange line on this graphic.

⁴⁴ ITLOS/PV.22/C28/2, p. 26 (lines 21–22) (Loewenstein).

⁴⁵ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 at pp. 39–40, para. 57.

⁴⁶ MR, para. 4.19, citing *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 235; ITLOS/PV.22/C28/2, p. 23 (lines 36–38) (Loewenstein).

⁴⁷ ITLOS/PV.22/C28/2, p. 24 (lines 24–25) (Loewenstein), citing *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61 at p. 101, para. 116.

1 The Chamber did not draw the orange line, the Chamber did not refashion
2 geography, even though the geographical realities meant that Côte d'Ivoire received
3 a larger share.

4
5 I turn now to the second reason why the Maldives does not accept that simply
6 because one has turned to the issue of delimitation of the continental shelf beyond
7 200 nm in this case that it can be considered without reference to geographical
8 configuration. At this point in my submission, I ask the Chamber to take a step back.

9
10 A bedrock principle is that maritime rights derive from the coastal State's sovereignty
11 over the land, a principle which can be summarized as "the land dominates the sea".
12 This is a principle referred to by Professor Sands on Monday and a point on which
13 Professor Thouvenin addressed this Chamber yesterday.

14
15 We see that principle reflected with respect to a State's continental shelf entitlement
16 beyond 200 nm in article 76 of UNCLOS. Mauritius seeks to rely upon article 76 to
17 draw out the fact that the basis for entitlement to a continental shelf beyond 200 nm
18 is not an automaticity based on distance. But the point that I want to draw out from
19 article 76 is that article 76 expressly states that that the entitlement to a continental
20 shelf is based on a State's "natural prolongation of its land territory" i.e., the
21 prolongation from its coast. As stated by the ICJ, it is "the coast of each of the
22 Parties" which "constitutes the starting line from which one has to set out in order to
23 ascertain how far the submarine areas appertaining to each of them extend in a
24 seaward direction". The Court has emphasized that "it is by means of the maritime
25 front of this landmass, in other words by its coastal opening, that this territorial
26 sovereignty brings its continental shelf rights into effect".⁴⁸ As the Court put the point
27 in the *Aegean Sea Continental Shelf* case:

28
29 [I]t is solely by virtue of the coastal State's sovereignty over the land that
30 rights of exploration and exploitation in the continental shelf can attach to
31 it, *ipso jure*, under international law. In short, continental shelf rights are
32 legally both an emanation from and an automatic adjunct of the territorial
33 sovereignty of the coastal State."⁴⁹

34
35 Coasts, which of course is a key aspect of geography, are the cornerstone and
36 fundamental basis of all States' maritime entitlements, including the OCS
37 entitlement.

38
39 Flowing from this bedrock principle, it is to coastal geography that the law turns to
40 provide a non-arbitrary reference point for an equitable delimitation. We see this in
41 the construction of the equidistance line, and also with respect to relevant
42 circumstances which may justify an adjustment of that equidistance line (which as
43 Mauritius expressly acknowledges "are essentially of a geographic nature"⁵⁰).
44 Coastal geography is the important anchor in the quest to satisfy the twin objectives
45 of both a stable legal outcome and flexibility to accommodate the circumstances in
46 maritime delimitation, as I referred to at the start of my submission.

⁴⁸ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at p. 41, para. 49.

⁴⁹ *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3 at p. 36, para. 86.

⁵⁰ MM, para. 4.33.

1
2 And of course a stable legal outcome has been and should remain vital to any
3 delimitation decision, including, as I referred to earlier, in order that States in other
4 disputes be assisted in their negotiations as required by article 83 of UNCLOS.⁵¹ As
5 the ICJ has said

6
7 ... the justice of which equity is an emanation is not abstract justice but
8 justice according to the rule of law; which is to say that its application should
9 display consistency and a degree of predictability; even though it looks with
10 particularity to the peculiar circumstances of an instant case, it also looks
11 beyond it to principles of more general application".⁵²
12

13 Yet Mauritius would not only have the Chamber simply ignore the coastal geography
14 in favour of its alternative approach that a split down the middle is equitable on the
15 basis that each Party receives an equal share, and this is despite the clear
16 jurisprudence stating that equity does not mean equality.
17

18 In any event, what does equal share really mean in this context? A continental shelf
19 entitlement is not a plot of land territory which can be divvied up for construction by
20 Hochtief, Istak or Balfour Beatty. A continental shelf has a value because of the
21 resources it may contain. One half of an area of OCS claims may contain more or
22 less resources than the other half. Geomorphological factors may also make one half
23 more or less valuable – for example, differences in cost and accessibility of seabed
24 resources in one half than the other.
25

26 The Chamber in this case plainly cannot take into account all the potentially myriad
27 factors into consideration there and, plainly, based on the information before it, this
28 Chamber cannot know which areas may be more prospective than others. But it is
29 equally plain that it cannot be assumed that simply because two areas cover the
30 same number of square kilometres this means that the Parties are receiving an
31 equal share of value. So this very premise of equality which underpins Mauritius'
32 case collapses.
33

34 The key point is that to accept Mauritius' approach would be to heave up the well-
35 embedded anchor of coastal geography in favour of a premise unmoored from
36 established legal criteria, leaving States seeking to negotiate in other disputes all at
37 sea. In short, against the tide of established jurisprudence, it is a call sign to
38 arbitrariness.
39

40 I began this section of my submission by posing the question whether there is a
41 reason why this Chamber should not apply the three-step methodology to the
42 delimitation beyond 200 nm in this case. There is none. Indeed we heard on Monday
43 Mauritius, in fact, considering the application of the three-step methodology to the
44 delimitation beyond 200 nm in this case. It focused on the second step, namely the
45 question of whether there are relevant circumstances requiring an adjustment to the
46 equidistance line, and relying in this regard on the cut-off effect which I have just

⁵¹ *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 243.

⁵² *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 at pp. 39–40, para. 45.

1 addressed.⁵³ For the reasons I have explained, any cut off is simply a reflection of
2 the geographical reality. An adjustment in favour of one State cannot result in the
3 drawing of a line having a “converse distorting effect on the seaward projection of”
4 the other State, which would be the case of the massive distortion proposed by
5 Mauritius.⁵⁴
6

7 Having engaged in the second step of the three-step methodology, Mauritius did not,
8 however, then engage with the third step – i.e., the final sense check that there is no
9 significant or gross disproportion arising from the continuation of the provisional
10 equidistance line. Throughout its written and oral pleadings to date, Mauritius has
11 studiously avoided considering the proportionality of applying the equidistance line to
12 the full overlapping areas of the Parties, including its new OCS claim. Instead, in
13 respect of an equidistance line, it has compared the size of the entitlements given to
14 each Party with reference only to the overlapping OCS claims in isolation, not taking
15 into context the maritime claims as a whole. The inappropriateness of that approach
16 is shown by the fact that, when it came to discussing the proportionality of its
17 proposed delimitation, Mauritius was quite happy to do a proportionality analysis of
18 the entire area of overlapping claims.
19

20 As the Chamber is aware, it is not the function of the proportionality test to determine
21 whether the provisional equidistance line distributes the disputed maritime spaces
22 proportionately but to determine whether that distribution is significantly
23 disproportional, and the Maldives had expressly stated in its Counter-Memorial its
24 delimitation including overlapping OCS entitlements would not give rise to any gross
25 disproportionality.
26

27 In conclusion, the approach to delimitation proposed by Mauritius is inadmissible
28 and, in any event, it is inconsistent with the well-established jurisprudence, conjured
29 up to bypass geographical realities and circumvent the obvious feasibility of simply
30 continuing the equidistance line.
31

32 Mr President, Members of the Chamber, as I have the honour of concluding the first-
33 round presentations of the Maldives, I wish to take this opportunity to reiterate the
34 crux of the Maldives’ submission.
35

36 Mr President, Members of the Chamber, this is a case where the key issue is
37 whether basepoints for the construction of a provisional equidistance line can be
38 placed on low-tide elevations at Blenheim Reef. They cannot. This is a case where
39 the Chamber must decide whether there is any reason not to apply the well-
40 established three-step methodology, the equidistance line, to the overlapping claims
41 of the Parties. There is not.
42

⁵³ ITLOS/PV.22/C28/2, p. 28 (lines 21–26) (Loewenstein): “But even if, quod non, the Special Chamber were to follow Maldives’ preferred approach – misguided as it is – the end-result would still be the same. To achieve the equitable result required by article 83, the Special Chamber inevitably would have to adjust the provisional equidistance line to account for the inequitable cut-off it produces, depriving Mauritius of nearly the entirety of its outer continental shelf entitlement.”

⁵⁴ *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 325.

1 Finally, this is a case where the Chamber must decide whether to assume
2 jurisdiction over Mauritius' extensive and wholly unsubstantiated claim to an OCS
3 entitlement, first made two years after it elected to commence these proceedings
4 and followed by a drip-feed of partial and inconsistent evidence. In the Maldives'
5 respectful submission, it can and should not.

6

7 I thank you for your attention, and that concludes the first-round submissions on
8 behalf of the Republic of Maldives.

9

10 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Ms Sander. This
11 brings us to the end of the first round of oral arguments of the Maldives. We will
12 continue the hearing tomorrow at 3 p.m. to hear the second round of oral arguments
13 of Mauritius.

14

15 The sitting is now closed. Good afternoon.

16

17

(The sitting closed at 12.25 p.m.)