

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

**YEAR 2023**

28 April 2023

List of Cases:

No. 28

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

(MAURITIUS/MALDIVES)

**JUDGMENT**

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*Present:* Judge PAIK, *President of the Special Chamber*; Judges JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges ad hoc* OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

In the

*Dispute concerning delimitation of the maritime boundary  
between Mauritius and Maldives in the Indian Ocean*

*between*

Mauritius,

*represented by*

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

*as Agent;*

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

*as Co-Agent;*

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

Mr Paul S. Reichler, Attorney-at-Law, Foley Hoag LLP, Washington, D.C., United States of America,

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

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

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

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

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

*as Counsel and Advocates;*

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

*as Counsel;*

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

*as Adviser;*

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

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

*as Technical Advisers;*

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

*as Assistant,*

*and*

the Maldives,

*represented by*

Mr Ibrahim Riffath, Attorney General,

*as Agent;*

Ms Khadeeja Shabeen, Deputy Attorney General,

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

*as Representatives;*

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

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

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

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

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

*as Counsel and Advocates;*

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

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

*as Technical Advisers;*

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

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

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

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

*as Assistants,*

THE SPECIAL CHAMBER,

composed as above,

after deliberation,

*delivers the following Judgment:*

## **I. Introduction**

1. By letter dated 23 August 2019, the Solicitor-General of the Republic of Mauritius (hereinafter “Mauritius”) informed the President of the International Tribunal for the Law of the Sea (hereinafter “the Tribunal”) of the institution of arbitral proceedings by Mauritius against the Republic of the Maldives (hereinafter “the Maldives”) on 18 June 2019, pursuant to Annex VII to the United Nations Convention on the Law of the Sea (hereinafter “the Convention”). Attached to that letter was the Notification and the Statement of the claim and grounds on which it is based (hereinafter “the Notification”) of Mauritius dated 18 June 2019, instituting arbitral proceedings against the Maldives under Annex VII to the Convention “in the dispute concerning the maritime boundary between Mauritius and Maldives”.

2. Following consultations held by the President of the Tribunal with representatives of Mauritius and the Maldives in Hamburg on 17 September 2019, a Special Agreement was concluded between the two States on 24 September 2019 to submit the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal (hereinafter “the Statute”).

3. The Special Agreement and Notification between Mauritius and the Maldives dated 24 September 2019 (hereinafter “the Special Agreement”), in its relevant part, reads as follows:

### **Special Agreement and Notification**

1. Pursuant to article 15, paragraph 2, of the Statute of the International Tribunal for the Law of the Sea (hereinafter “the Tribunal”), the Republic of Mauritius and the Republic of Maldives hereby record their agreement to submit to a special chamber of the Tribunal the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean. The agreement was reached on 24 September 2019, under the conditions reflected in the agreed Minutes of Consultations (17 September 2019), attached hereto.

2. The Republic of Mauritius and the Republic of Maldives further record their agreement that the special chamber shall be composed of the following nine individuals:

Judge Jin-Hyun Paik, as President  
 Judge José Luis Jesus  
 Judge Jean-Pierre Cot  
 Judge Shunji Yanai  
 Judge Boualem Bouguetaia  
 Judge Tomas Heidar  
 Judge Neeru Chadha  
 Mr Bernard Oxman, Judge *ad hoc* (Republic of Maldives)  
 Judge *ad hoc* to be chosen by the Republic of Mauritius

3. Receipt by the Registry of the Tribunal of the electronic copy of this Agreement and Notification signed by both Parties shall constitute the notification contemplated in article 55 of the Rules of the Tribunal. The date on which the Registry of the Tribunal has received this electronic copy will constitute the date of the institution of proceedings before the Tribunal. The original of the Special Agreement and Notification should be submitted to the Tribunal forthwith.

4. The Minutes of Consultations agreed between Mauritius and the Maldives on 17 September 2019 and attached to the Special Agreement read in their relevant part as follows:

3. During the consultations, the Parties agreed to transfer the arbitral proceedings instituted by Mauritius in the dispute concerning the delimitation of the maritime boundary between Mauritius and the Maldives in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute. The Parties agreed that the date of the institution of proceedings before the Tribunal is the date on which the Registry of the Tribunal has received the electronic copy of the Special Agreement and Notification signed by both Parties (see paragraph 3 of the Special Agreement and Notification). The proceedings of the special chamber of the Tribunal shall be governed by the provisions contained in the Statute and the Rules of the Tribunal.

4. The Parties agreed that the special chamber to be formed pursuant to article 15, paragraph 2, of the Statute shall be composed of nine members, two of whom will be judges *ad hoc* chosen by the Parties in accordance with article 17 of the Statute of the Tribunal. The composition



of the special chamber will be determined by the Tribunal with the approval of the parties. In this respect, the Parties have agreed on the following names:

Judge Jin-Hyun Paik, as President  
 Judge José Luis Jesus  
 Judge Jean-Pierre Cot  
 Judge Shunji Yanai  
 Judge Boualem Bouguetaia  
 Judge Tomas Heidar  
 Judge Neeru Chadha

Mauritius has not yet chosen its judge *ad hoc* but will make its nomination in due course. Maldives has chosen Mr Bernard Oxman as judge *ad hoc*.

5. An electronic copy of the Special Agreement was received by the Registry on 24 September 2019 and the original was received on 7 October 2019. Pursuant to paragraph 3 of the Special Agreement, receipt by the Registry of the electronic copy of the Special Agreement signed by both Parties constituted the notification contemplated in article 55 of the Rules of the Tribunal (hereinafter “the Rules”).

6. As stated in the Special Agreement, the Government of Mauritius had appointed Mr Dheerendra Kumar Dabee, G.O.S.K., S.C, Solicitor-General, as Agent for Mauritius, and the Government of the Maldives had appointed Mr Ibrahim Riffath, Attorney General, as Agent for the Maldives.

7. By Order dated 27 September 2019, the Tribunal decided to accede to the request of Mauritius and the Maldives to form a special chamber of nine judges to deal with the dispute concerning delimitation of their maritime boundary in the Indian Ocean (hereinafter “the Special Chamber”), and determined, with the approval of the Parties, the composition of the Special Chamber as follows:

President	Paik
Judges	Jesus
	Cot
	Yanai
	Bouguetaia
	Heidar
	Chadha
Judge <i>ad hoc</i>	Oxman
Judge <i>ad hoc</i>	to be chosen by Mauritius.

8. In the Order, the Tribunal stated that, in the Special Agreement, the Maldives had notified the Tribunal of its choice of Mr Bernard Oxman to sit as judge *ad hoc* in the Special Chamber, and that no objection to the choice of Mr Oxman as judge *ad hoc* appeared to the Tribunal. The Tribunal also stated that, in the Special Agreement, Mauritius had notified the Tribunal of its intention to choose a judge *ad hoc*.

9. The Registrar transmitted a copy of the Order of 27 September 2019 to the Parties on the same date.

10. The case was entered in the List of Cases as Case No. 28.

11. By letter dated 27 September 2019, the Registrar, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, notified the Secretary-General of the United Nations of the institution of proceedings. By a note verbale of the same date, the Registrar also notified the States Parties to the Convention, in accordance with article 24, paragraph 3, of the Statute, of the institution of proceedings.

12. On 8 October 2019, in accordance with article 45 of the Rules, telephone consultations were held by the President of the Special Chamber with representatives of the Parties to ascertain their views with regard to questions of procedure in respect of the case.

13. By letter dated 9 October 2019, the Agent of Mauritius informed the Registrar that Mauritius had chosen Mr Nicolaas Schrijver to sit as judge *ad hoc* in the case. The Registrar transmitted a copy of the letter to the Agent of the Maldives on the same date. No objection to the choice of Mr Schrijver as judge *ad hoc* was raised by the Maldives, and no objection appeared to the Special Chamber. Consequently, in accordance with article 19, paragraph 3, of the Rules, the Parties were informed by separate letters dated 4 November 2019 that Mr Schrijver would be admitted to participate in the proceedings as judge *ad hoc*, after having made the solemn declaration required under article 9 of the Rules.

14. Having ascertained the views of the Parties, by Order dated 10 October 2019, the President of the Special Chamber, in accordance with articles 59 and 61 of the Rules, fixed the following time-limits for the filing of the pleadings in the case: 9 April 2020 for the Memorial of Mauritius and 9 October 2020 for the Counter-Memorial of the Maldives. The Registrar transmitted a copy of the Order to the Parties on 10 October 2019.

15. By communication addressed to the Registrar and received on 18 December 2019, within the time-limit set by article 97, paragraph 1, of the Rules, the Maldives filed with the Special Chamber written preliminary objections “under article 294 of the Convention and article 97 of the Rules” to the jurisdiction of the Special Chamber and the admissibility of Mauritius’ claims (hereinafter “the Preliminary Objections”). The Preliminary Objections were notified to Mauritius on the same date.

16. Upon receipt of the Preliminary Objections by the Registry, pursuant to article 97, paragraph 3, of the Rules, the proceedings on the merits were suspended, as noted in the Order of the President of the Special Chamber dated 19 December 2019.

17. By letter dated 26 August 2020, the Registrar informed the Parties that Judge Cot had tendered his resignation as member of the Special Chamber by letter dated 26 August 2020 to the President of the Special Chamber with effect from that date, and that, accordingly, a vacancy had occurred in the Special Chamber. The Registrar also informed the Parties that the President of the Special Chamber wished to ascertain their views with regard to the Special Chamber’s composition. Further to written consultations, the Parties agreed that Judge Stanislaw Pawlak should fill the vacancy left by the resignation of Judge Cot.

18. By Order dated 15 September 2020, the Tribunal determined, with the approval of the Parties, that Judge Pawlak should fill the vacancy left by the resignation of Judge Cot and that as a result the composition of the Special Chamber formed to deal with this case was as follows:

President	Paik
Judges	Jesus Pawlak Yanai Bouguetaia Heidar Chadha
Judges <i>ad hoc</i>	Oxman Schrijver

19. On 15 September 2020, the Registrar transmitted a copy of the Order to each Party.

20. By letter dated 6 October 2020 addressed to the President of the Special Chamber, received by the Registry on 7 October 2020, the Prime Minister of Mauritius notified the Special Chamber of the appointment of Mr Jagdish Dharamchand Koonjul, Ambassador and Permanent Representative of Mauritius to the United Nations in New York, as Co-Agent for Mauritius.

21. At a public sitting held in hybrid format on 12 October 2020, Mr Oxman and Mr Schrijver each made the solemn declaration required under article 9 of the Rules.

22. At a public sitting held on 28 January 2021, the Special Chamber delivered its Judgment on Preliminary Objections (*Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020-2021*, p. 17 (hereinafter “Judgment on Preliminary Objections”)). In operative paragraph 354 of the Judgment, the Special Chamber decided as follows:

(1) Unanimously,

*Rejects* the first preliminary objection raised by the Maldives on the grounds that the United Kingdom is an indispensable third party to the present proceedings.

(2) By 8 votes to 1,

*Rejects* the second preliminary objection raised by the Maldives on the grounds that the Special Chamber lacks jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago.

...

(3) By 8 votes to 1,

*Rejects* the third preliminary objection raised by the Maldives relating to articles 74 and 83 of the Convention.

...

(4) Unanimously,

*Rejects* the fourth preliminary objection raised by the Maldives based on the non-existence of a dispute between the Parties.

(5) Unanimously,

*Rejects* the fifth preliminary objection raised by the Maldives based on an abuse of process.

(6) By 8 votes to 1,

*Finds* that it has jurisdiction to adjudicate upon the dispute submitted to it by the Parties concerning the delimitation of the maritime boundary between them in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible; *defers*, however, to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.

...

(7) Unanimously,

*Reserves* for consideration and decision in the proceedings on the merits the question of jurisdiction and admissibility with respect to Mauritius' claim stated in paragraph 28 of its Notification concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention.

23. A copy of the Judgment was provided to each Party at the public sitting on 28 January 2021. By letter of the same date, a copy of the Judgment was also transmitted to the Secretary-General of the United Nations pursuant to article 125, paragraph 3, of the Rules.

24. In accordance with article 59 of the Rules, the President of the Special Chamber, having ascertained the views of the Parties, fixed by Order dated 3 February 2021 the following time-limits for the filing of pleadings in the case: 25 May 2021 for the Memorial of Mauritius and 25 November 2021 for the Counter-Memorial of the Maldives. On 3 February 2021, the Registrar transmitted a copy of the Order to each Party.

25. In a letter dated 9 April 2021, the Agent of Mauritius stated that “[d]ue to ongoing restrictions on air travel to and from Mauritius and a Temporary Restrictions of Movement Order in Mauritius related to the COVID-19 pandemic, Mauritius may experience some delay in the printing and shipping of hard copies of its Memorial.” The Agent of Mauritius further indicated that “[i]n this regard, counsel for Mauritius has consulted with counsel for the Maldives as to whether the Parties could agree that they both file their respective written pleadings on the due date in electronic format, with hard copies to follow within 30 days” and that “[t]he Maldives has indicated that it has no objection to such an approach.” By letter of 14 April 2021, the Agent of the Maldives confirmed that “the Parties have agreed, subject to the views of the Special Chamber, that their respective written pleadings shall be filed on the relevant due dates in electronic format, with hard copies to follow within 30 days.”

26. By letter dated 15 April 2021, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that in light of the agreement of the Parties, the Memorial of Mauritius and the Counter-Memorial of the Maldives could be filed as suggested by the Parties.

27. The Memorial of Mauritius was duly filed on 25 May 2021 in electronic format and a copy thereof was transmitted to the Agent of the Maldives on the same date by the Registrar. On 8 June 2021, the Registry received the original copy and 40 additional paper copies of the Memorial. The Registrar transmitted a certified paper copy of the Memorial to the Agent of the Maldives on 9 June 2021.

28. By letter dated 18 October 2021, the Solicitor-General of Mauritius conveyed to the Registrar “the decision of the Government of the Republic of Mauritius that Mr Dheerendra Kumar Dabee G.O.S.K., S.C., who retired as Solicitor General on 27 September 2021 and who now holds the office of Legal Advisor/Consultant in the Attorney General’s office, will continue to act as Agent of the Republic of Mauritius in the latter capacity.” The Registrar transmitted a copy of the communication from the Solicitor-General of Mauritius to the Agent of the Maldives on 18 October 2021.

29. By communication dated 24 November 2021, the “Chagossian Committee Seychelles” sought permission to file submissions, presented therein, as *amicus curiae* in the case. By letter dated 25 November 2021, the Registrar invited the Parties to submit comments on this request and attached a copy of the submissions to the letter.

30. The Counter-Memorial of the Maldives was duly filed on 25 November 2021 in electronic format and a copy thereof was transmitted to the Agent of Mauritius on the same date by the Registrar. On 20 December 2021, the Registry received the original copy and 40 additional paper copies of the Counter-Memorial. The Registrar transmitted a certified paper copy of the Counter-Memorial to the Agent of Mauritius on the same day.

31. By email dated 3 December 2021, the Registrar, at the request of the President of the Special Chamber, sought the Parties’ preliminary views with regard to the filing of a second round of written pleadings in the case. In communications dated 7 and 10 December 2021 respectively, the Agent of Mauritius and the Agent of the Maldives expressed the view that a second round of written pleadings was necessary. With regard to the time-limits for the filing of a Reply and a Rejoinder, the Agent of Mauritius stated that the time-limit should be four months and the Agent of the Maldives stated that the time-limit should be no more than four months.

32. In accordance with article 61 of the Rules, the President of the Special Chamber, taking into account the agreement of the Parties, authorized by Order dated 15 December 2021 the submission of a Reply by Mauritius and a Rejoinder by the Maldives.

33. In the Order, the President of the Special Chamber fixed the following time-limits for the filing of those pleadings in the case: 14 April 2022 for the Reply of Mauritius and 15 August 2022 for the Rejoinder of the Maldives. By separate letters dated 15 December 2021, the Registrar transmitted a copy of the Order to each Party.

34. With regard to the request by the “Chagossian Committee Seychelles” referred to in paragraph 29, the Agent of the Maldives, by letter dated 15 December 2021, stated that “in the absence of any express rules concerning *amicus curiae* submissions by non-governmental entities such as the Committee, the acceptance of this request by the Committee is for determination by the Special Chamber in the exercise of its inherent powers over procedural questions.”

35. By letter dated 16 December 2021, the Agent of Mauritius indicated that Mauritius “is comfortable leaving it to the discretion of the Special Chamber to determine whether this communication should be included in the case file ... and would have no objection should it be so included.”

36. By letter dated 11 January 2022, the Registrar informed the Agents of the Parties that the Special Chamber, after reviewing the *amicus curiae* submissions and the comments thereon made by the Parties, decided that the request should not be accepted and that the *amicus curiae* submissions by the “Chagossian Committee Seychelles” should not be included in the case file. By letter of the same date, the Registrar also communicated the decision of the Special Chamber to the “Chagossian Committee Seychelles”.

37. In a letter dated 12 January 2022 addressed to the Registrar, the Agent of Mauritius referred to “[Mauritius]’ intention to carry out an on-site technical and scientific survey of Blenheim Reef, Salomon Islands Atoll and appurtenant waters.” The Agent of Mauritius stated that “Mauritius hereby seeks the urgent assistance of the Special Chamber to assist the Parties to find a solution that would allow the survey vessel to depart from, and return to, Maldives to collect and disembark members of the survey team.” The Registrar transmitted a copy of the letter to the Agent of the Maldives on 13 January 2022.

38. In a letter dated 13 January 2022 addressed to the Registrar, the Agent of the Maldives referred to separate diplomatic correspondence between the Parties in which “Mauritius has requested the Maldives’ cooperation in facilitating the departure of the survey vessel from Gan in Addu Atoll, the Maldives’ southernmost atoll.” In that letter, the Agent stated that the Maldives “has indicated that it is willing to



accede to this request and will grant permission to individuals with technical roles directly involved in the survey to enter and exit the port at Gan, subject to Mauritius obtaining the necessary clearances.” The Agent also stated that “the Maldives’ cooperation in this respect is without prejudice to its right to challenge the admissibility and relevance of any evidence generated by the said survey in the proceedings before the Special Chamber.” The Registrar transmitted a copy of the letter from the Agent of the Maldives to the Agent of Mauritius on the same day.

39. By letter dated 13 January 2022, the Registrar requested the Parties to inform the President of the Special Chamber of further developments relating to the matter raised in the above-mentioned communications by 18 January 2022. Further comments on the matter were provided by the Agent of Mauritius in letters dated 17 January and 8 February 2022 and by the Agent of the Maldives in letters dated 17 and 20 January and 14 February 2022.

40. In the letter dated 17 January 2022, the Agent of Mauritius stated that “the conditions that Maldives has imposed are unacceptable to Mauritius” and “make it impossible for Mauritius to use the port of Gan (or any other port in Maldives).” In this regard, the Agent stated that the Maldives “is seeking to severely restrict the Mauritius survey team, by excluding *its* lawyers and the government officials who closely direct and instruct them.” With reference to a note verbale from the Maldives dated 13 January 2022, the Agent further stated that the Maldives “has conditioned its consent to the use of its port facility at Gan on Mauritius obtaining ‘*necessary clearances*’ from a third State which the Special Chamber, like the International Court of Justice, has ruled to have no claim to sovereignty over any part of the Chagos Archipelago.” The Agent added that Mauritius had “concluded that it must prepare alternative arrangements to conduct the survey” and “[i]n this regard, ... will take steps to recover the additional costs incurred by Mauritius as a result of Maldives’ conduct in the relief it seeks from the Special Chamber.” In the letter dated 8 February 2022, the Agent informed the Special Chamber that Mauritius had “proceeded to make arrangements for the survey to start and finish from a different location” and that it “therefore sees no need to further engage with Maldives on this issue”. The Registrar transmitted a copy of these letters to the Agent of the Maldives.

41. In the letter dated 17 January 2022, the Agent of the Maldives stated that the Maldives is “willing to facilitate the survey which Mauritius intends to undertake, without prejudice to the Maldives’ position as to the admissibility and relevance of any evidence which may arise as a result of the said survey in the proceedings before the Special Chamber” and that “[i]t is now for Mauritius to take the necessary steps to obtain authorisation from the relevant Maldivian authorities.” In the letter dated 20 January 2022, the Agent stated that “it is not clear on what basis Mauritius concludes that the Maldives has excluded from Mauritius’ survey ‘lawyers and the government officials who closely direct and instruct them’” and that “Mauritius is well aware of the practical need for ... clearance in view of the continued British administration of the Chagos Archipelago.” In the letter dated 14 February 2022, the Agent stated that “[t]he Special Chamber has already received the relevant communications regarding the Maldives’ willingness to cooperate with Mauritius’ technical survey” and that the Maldives “will therefore not comment further on Mauritius’ continued misinterpretation of the facts and rejects categorically ... that Mauritius is entitled to compensation for the additional costs of the survey.” The Registrar transmitted a copy of these letters to the Agent of Mauritius.

42. In a letter dated 8 April 2022, the Agent of Mauritius stated that Mauritius might experience some delay in the shipping of the hard copies of its Reply in light of ongoing restrictions related to the COVID-19 pandemic and requested that a similar procedure as for the first round of written pleadings be adopted (see paragraph 25 above). In response to a letter from the Registrar dated 8 April 2022, the Agent of the Maldives indicated by letter dated 11 April 2022 that he had no objection to Mauritius’ proposal. By letter dated 11 April 2022, the Registrar, at the request of the President of the Special Chamber, informed the Agents of the Parties that in light of the agreement of the Parties, the Reply of Mauritius and the Rejoinder of the Maldives could be filed as suggested by the Parties.

43. The Reply of Mauritius was duly filed on 14 April 2022 in electronic format and a copy thereof was transmitted to the Maldives on the same date by the Registrar. On 4 May 2022, the Registry received the original copy and 40 additional paper copies of the Reply. The Registrar transmitted a certified paper copy of the Reply to the Agent of the Maldives on the same date.

44. The Rejoinder of the Maldives was duly filed on 15 August 2022 in electronic format and a copy thereof was transmitted to Mauritius on the same date by the Registrar. On 5 September 2022, the Registry received the original copy and 40 additional paper copies of the Rejoinder. The Registrar transmitted a certified paper copy of the Rejoinder to the Agent of Mauritius on the same date.

45. By letter dated 16 August 2022, the Registrar, at the request of the President of the Special Chamber, informed the Parties that the Special Chamber was considering, without prejudice to questions of jurisdiction and admissibility, whether it would be necessary to arrange for an expert opinion in the case pursuant to article 82 of the Rules. The Registrar also informed the Parties that, should the Special Chamber decide to arrange for an expert opinion, it would be entrusted to one or several experts who would be asked to prepare a report on scientific and technical issues concerning the delimitation of the continental shelf beyond 200 nautical miles (hereinafter “nm”). The Registrar indicated that, pursuant to article 82, paragraph 1, of the Rules, the President of the Special Chamber had fixed 29 August 2022 as the time-limit within which each Party could present its position concerning any such appointment, in particular whether an expert opinion was necessary in the present case, and its views on the subject of the expert opinion, the number and mode of appointment of the experts, and the procedure to be followed. The Registrar further indicated that the position presented by each Party would be transmitted to the other Party immediately and that any comments that either Party might wish to make on the position of the other Party should be transmitted at the latest by 2 September 2022. By email dated 26 August 2022, the Registrar informed the Parties that the time-limits referred to in her aforementioned letters were extended until 31 August 2022 and 5 September 2022, respectively.

46. By Order dated 18 August 2022, the President of the Special Chamber, having ascertained the views of the Parties, fixed 17 October 2022 as the date for the opening of the oral proceedings. The Registrar transmitted forthwith a copy of the Order to each Party.

47. By letter dated 30 August 2022, the Agent of Mauritius stated that “Mauritius welcomes the proposal that the Special Chamber might appoint one or more experts to prepare an expert opinion on scientific and technical matters”. The Registrar transmitted a copy of the letter to the Agent of the Maldives on 31 August 2022.

48. By letter dated 31 August 2022, the Agent of the Maldives stated that “it is the respectful position of the Maldives that arranging an expert report on scientific and technical issues is clearly unnecessary and manifestly inconsistent with principles of procedural fairness.” The Registrar transmitted a copy of the letter to the Agent of Mauritius on the same date.

49. By separate letters dated 5 September 2022, the Agents of each Party provided comments on the position expressed by the other Party in the aforementioned letters.

50. On 8 September 2022, the President of the Special Chamber held consultations by videoconference with the Agents of the Parties to ascertain their views regarding the organization of the hearing.

51. By letter dated 30 September 2022, the Agent of Mauritius brought to the attention of the Special Chamber correspondence between the President of the Maldives and the Prime Minister of Mauritius, a copy of which was attached to his letter. This correspondence consisted of a letter from the President of the Maldives dated 22 August 2022, and a letter from the Prime Minister of Mauritius dated 23 September 2022. With reference to that correspondence, the Agent of Mauritius stated that

Maldives has decided to “change its position” with regard to UN General Assembly Resolution 73/295 and has given an assurance to Mauritius that it would vote ‘yes’ to a future resolution affirming and giving effect to the Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

The Agent further stated that “the President of Maldives has given an assurance that Maldives will provide every assistance to facilitate the future travel of the Prime

Minister of Mauritius through Maldives to the Chagos Archipelago.” The Agent also stated that

[i]n reliance of these assurances and Maldives’ change of position, the Prime Minister of Mauritius informed the President of Maldives that “Mauritius has decided to leave to the past the difficulties that arose during the site visit to the Chagos Archipelago in February last, and will drop the claims it has put to ITLOS in that regard.”

For the avoidance of doubt, save with regard to Mauritius’ request that the Special Chamber adjudge and declare that Maldives pay a reasonable sum of not less than €460,000 to Mauritius in respect of the additional costs incurred in the conduct of the survey, Mauritius fully maintains its claims as set out in the Memorial and the Reply.

The Registrar transmitted a copy of the communication from the Agent of Mauritius to the Agent of the Maldives on the same date.

52. By letter dated 6 October 2022, the Agent of the Maldives stated, with regard to the letter from Mauritius of 30 September 2022, that “[t]he Maldives acknowledges that Mauritius is no longer pursuing its claim for compensation against the Maldives with respect to costs incurred by Mauritius as regards its survey of February 2022”. The Agent also stated that “[a]s Mauritius’ letter confirms, the Maldives has expressed its willingness to welcome and provide every assistance for the future travel of the Prime Minister of Mauritius to the Chagos Archipelago through the Maldives” and that “[t]he Maldives notes that this position is consistent with the Maldives’ prior express and repeated assurances of cooperation with Mauritius in respect to the Survey as indicated in correspondence from January 2021.” The Agent further stated that “Mauritius’ letter also confirms that the Maldives will vote yes to the forthcoming resolution of the UN General Assembly affirming and giving effect to the 2019 ICJ Advisory Opinion” and that

[a]s indicated by the Maldives in its letter to Mauritius dated 22 August 2022, this position is with a view to leaving behind the difficulties that arose from Mauritius’ formal protest in 2011 against the Maldives’ 2010 submission to the Commission on the Limits of the Continental Shelf (‘CLCS’), having regard to the impending conclusion of the proceedings before the Special Chamber on delimitation of the maritime boundary. The Maldives’ position is fully consistent with its longstanding and express position that it supports all UN processes of the decolonisation of territories and the right to self-determination, reflecting the Maldives’ continuing commitment to co-operating in good faith with Mauritius.

The Registrar transmitted a copy of the letter of the Agent of the Maldives to the Agent of Mauritius on the same date.

53. With regard to Mauritius' list of agents, counsel and advocates who would appear on its behalf at the hearing, by letter dated 10 October 2022, the Agent of the Maldives stated that, "included in the list of 'counsel and advocates' for Mauritius is Dr Mohammed Rezah Badal, who is identified as Director General of the Department of the Continental Shelf, Maritime Zones Administration and Exploration in the Office of Mauritius' Prime Minister." The Agent further noted that "it would be wholly inappropriate if Dr Badal testifies as either an expert or a witness under the guise of a counsel or advocate." The Agent also stated that "the written phase of these proceedings has now closed, and that it would be entirely inappropriate for Mauritius to introduce new evidence, in particular through the expert or witness testimony of Dr Badal." The Registrar transmitted a copy of the letter of the Agent of the Maldives to the Agent of Mauritius on the same date.

54. By letter dated 12 October 2022, the Agent of Mauritius stated that "Dr Badal is a member of the Mauritian delegation and will be presenting to the Special Chamber in his capacity as counsel for the Republic of Mauritius." The Agent confirmed that "Dr Badal will not '*testif[y] as either an expert or witness under the guise of a counsel or advocate*' and will not '*introduce new evidence*'."

55. In accordance with article 68 of the Rules, the Special Chamber held initial deliberations on 13 and 14 October 2022, prior to the opening of the oral proceedings.

56. On 14 October 2022, the Agent of Mauritius and the Agent of the Maldives each submitted materials required under paragraph 14 of the Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal.

57. On 16 October 2022, the President of the Special Chamber held consultations with representatives of the Parties to address a number of procedural matters pertaining to the oral proceedings. During the consultations, the President of the

Special Chamber communicated to the Parties a list of questions which the Special Chamber wished the Parties specially to address, in accordance with article 76, paragraph 1, of the Rules. These questions were as follows:

To both Parties:

1. Both Parties maintain that an area beyond 200 nautical miles from their respective coastal baselines is part of the continental shelf under article 76 of the United Nations Convention on the Law of the Sea (“the Convention”) and accordingly outside the adjacent “Area” to which reference is made in articles 1, paragraph 1(1), 134, 136, 137 and 311, paragraph 6, of the Convention. That position is set out in their respective submissions to the Commission on the Limits of the Continental Shelf (“CLCS”). Taking into account article 76, paragraph 8, and article 8 of Annex II to the Convention, what would be the consequence if the CLCS takes a different position on the entitlements of the Parties in its recommendations?

2. Can the Parties elaborate on their positions with respect to the question whether the Maldives’ entitlement to the continental shelf beyond 200 nautical miles from its baseline can be extended into the 200 nautical miles limit of Mauritius, as indicated in Figure 29 of the Maldives’ Counter-Memorial and Figure 6 of the Maldives’ Rejoinder? To what extent is the statement relating to the rectification of its submission to the CLCS made by the Maldives to Mauritius in the “First meeting on maritime delimitation and submission regarding the extended continental shelf between the Republic of Maldives and Republic of Mauritius” of 21 October 2010 relevant in this regard?

3. Can the Parties clarify whether the three points for Mauritius’ archipelagic baselines (C83, C84 and C85; see Figure R2.4 of Mauritius’ Reply and Figure 5 of the Maldives’ Rejoinder) are the outermost points of drying reefs which are situated wholly or partly at a distance not exceeding 12 nautical miles from Île Takamaka? Do the provisions of article 13, paragraph 1, second sentence, and article 47, paragraph 4, of the Convention permit the use of basepoints on Blenheim Reef that are beyond 12 nautical miles from Île Takamaka?

4. Can the Parties provide the following documents?

The Maldives: Main Body and supporting scientific and technical data of the Submission made by the Maldives to the CLCS on 26 July 2010

Mauritius: Supporting scientific and technical data of the Submission made by Mauritius to the CLCS in April 2022.

58. From 17 to 24 October 2022, the Special Chamber held seven public sittings.

At these sittings, the following speakers addressed the Special Chamber:

*For Mauritius:*

Mr Dheerendra Kumar Dabee,  
*as Agent;*

Mr Jagdish Dharamchand Koonjul,  
*as Co-Agent;*

Mr Philippe Sands,  
Mr Pierre Klein,  
Mr Andrew Loewenstein,  
Mr Yuri Parkhomenko,  
Mr Remi Reichhold,  
Mr Mohammed Rezah Badal,  
*as Counsel and Advocates;*

*For the Maldives:*

Mr Ibrahim Riffath,  
*as Agent;*

Ms Khadeeja Shabeen,  
Ms Mariyam Shaany,  
*as Representatives;*

Mr Payam Akhavan,  
Mr Jean-Marc Thouvenin,  
Mr Makane Moïse Mbengue,  
Ms Amy Sander,  
Ms Naomi Hart,  
*as Counsel and Advocates.*

59. During the hearing, the Parties displayed a number of exhibits on screen, including maps, photographs and excerpts of documents.

60. The hearing was broadcast on the Internet as a webcast.

61. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public when the oral proceedings were opened.

62. In accordance with article 86, paragraph 1, of the Rules, transcripts of the verbatim records of each public sitting were prepared by the Registry in the official



languages of the Tribunal used during the hearing. In accordance with article 86, paragraph 4, of the Rules, copies of the transcripts of those records were circulated to the judges sitting in the case and to the Parties. The transcripts were also made available to the public in electronic form.

63. With regard to the list of questions communicated to the Parties on 16 October 2022 (see paragraph 57 above), answers to questions 1, 2 and 3 were provided during the first round of oral pleadings by counsel for Mauritius on 17 October 2022 and by counsel for the Maldives on 20 October 2022.

64. With regard to question 4 of the aforementioned list of questions, the materials requested by the Special Chamber were submitted in electronic format by Mauritius on 17 October 2022 and by the Maldives on 18 October 2022. By letter dated 18 October 2022, the Registrar requested the Parties to indicate whether there were any confidentiality requirements with regard to the materials that they had submitted.

65. By letter dated 19 October 2022, the Agent of Mauritius stated that Mauritius had no objection to the sharing of their data with the Maldives “on the understanding that the data will remain fully confidential within these proceedings and will not be shared with any other party.”

66. By letter dated 19 October 2022, the Agent of the Maldives, referring to the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf indicated that these guidelines “allow States to keep their submissions and all accompanying materials confidential.” The Agent further indicated that “[n]onetheless, the Maldives does not object to the disclosure of its materials to Mauritius for the purpose of these proceedings” but that the provision of these materials “is without prejudice to [the Maldives’] objections as to jurisdiction and admissibility.”

67. By letter dated 21 October 2022, the Agent of Mauritius stated that during the hearing the Maldives presented “new material of a scientific and technical nature” to the Special Chamber and that some of the material presented by the Maldives “is not

to be found in the written record and its public provenance is not clearly indicated.” The Agent further stated that “Mauritius will not object to the introduction of this new material and reserves the right to respond to the issues raised in Maldives’ new material”. The Registrar transmitted a copy of the letter of the Agent of Mauritius to the Agent of the Maldives on the same date. Referring to that letter during the second round of oral proceedings, counsel for the Maldives, on 24 October 2022, stated that “there was in fact nothing for Mauritius to object to in the first place” and that “[s]urely Mauritius would agree that the Maldives should be able to respond to the new arguments that it has raised in these proceedings.”

68. By letter dated 22 October 2022, the Registrar, at the request of the President of the Special Chamber, informed the Parties that the data submitted by them in response to question 4 of the Special Chamber’s list of questions were to be kept confidential but might be disclosed for the purpose of the proceedings only. In that letter, the Registrar also informed the Parties that the data would be transmitted to the other Party at the end of the hearing and that each Party would have the opportunity to provide comments, if any, in relation to the legal, scientific and technical aspects of the data.

69. On 24 November 2022, both Parties provided comments with regard to the materials submitted by the respective other Party in relation to question 4 of the list of questions, which were then transmitted to the other Party by letter of the Registrar on the same date. In the letter, the Registrar informed each Party that it could provide comments, if any, in relation to the communication submitted by the other Party. Each Party provided comments on 12 December 2022, which were transmitted to the other Party on the same date.

## **II. Submissions of the Parties**

70. In its Memorial, Mauritius made the following submissions:

On the basis of the facts and law set forth in the Memorial, Mauritius respectfully requests the Special Chamber to adjudge and declare that the maritime boundary between Mauritius and Maldives in the Indian Ocean

connects the following points, using geodetic lines (the geographic coordinates are in WGS 1984 datum):

Point	Latitude	Longitude
1	2° 17' 17.4" S	70° 11' 54.4" E
2	2° 20' 12.2" S	70° 21' 35.7" E
3	2° 22' 0.9" S	70° 27' 36.7" E
4	2° 23' 22.1" S	70° 32' 6.2" E
5	2° 23' 54.8" S	70° 33' 54.9" E
6	2° 25' 11" S	70° 38' 8.1" E
7	2° 32' 47.7" S	71° 3' 25" E
8	2° 33' 30.4" S	71° 5' 45.8" E
9	2° 33' 54.7" S	71° 7' 5.8" E
10	2° 35' 21.9" S	71° 11' 53.8" E
11	2° 35' 32.9" S	71° 12' 29.9" E
12	2° 35' 44.1" S	71° 13' 6.9" E
13	2° 36' 43.7" S	71° 16' 22.4" E
14	2° 36' 45.6" S	71° 16' 28.8" E
15	2° 36' 57.7" S	71° 17' 8.4" E
16	2° 39' 43.9" S	71° 26' 34.4" E
17	2° 40' 14.2" S	71° 28' 17.6" E
18	2° 41' 7" S	71° 31' 18.1" E
19	2° 41' 9.9" S	71° 31' 28.2" E
20	2° 42' 23.1" S	71° 35' 37.3" E
21	2° 42' 24.6" S	71° 35' 42.4" E
22	2° 43' 43.1" S	71° 40' 10.2" E
23	2° 43' 52.1" S	71° 40' 41" E
24	2° 43' 54.2" S	71° 40' 48.1" E
25	2° 44' 28.4" S	71° 42' 44.4" E
26	2° 45' 3.7" S	71° 44' 44.3" E
27	2° 47' 19.4" S	71° 52' 25.2" E
28	2° 48' 23.3" S	71° 59' 20.7" E
29	2° 48' 24" S	71° 59' 25.5" E
30	2° 48' 27.1" S	71° 59' 45.3" E
31	2° 49' 4.8" S	72° 3' 49.2" E
32	2° 49' 58.7" S	72° 9' 37.6" E
33	2° 51' 7.4" S	72° 17' 3.7" E
34	2° 54' 22.7" S	72° 38' 10.6" E
35	2° 55' 29.8" S	72° 45' 29.5" E
36	2° 56' 1.3" S	72° 48' 55" E
37	2° 57' 1.5" S	72° 55' 28.5" E
38	2° 57' 40" S	72° 59' 39.1" E
39	2° 59' 10.4" S	73° 9' 26" E
40	2° 59' 21.7" S	73° 10' 39.2" E
41	3° 0' 19.8" S	73° 16' 55.3" E
42	3° 3' 6.6" S	73° 34' 54.1" E
43	3° 3' 33.6" S	73° 37' 48.6" E
44	3° 5' 11.1" S	73° 48' 18.4" E
45	3° 7' 24.8" S	74° 2' 42.8" E
46	3° 7' 47.2" S	74° 5' 8.1" E
47	3° 7' 51.4" S	74° 5' 35.2" E

48	3° 12' 18.4" S	74° 34' 19.5" E
49	3° 14' 37.7" S	74° 49' 19.9" E
50	3° 16' 50.3" S	75° 3' 21.6" E
51	3° 17' 53.4" S	75° 10' 2.2" E
52	3° 18' 47.5" S	75° 15' 44.3" E
52	3° 18' 47.5" S	75° 15' 44.3" E
53	1° 53' 46.4" S	77° 16' 14.9" E

71. In its Reply, Mauritius made the following submissions:

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

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

Point	Latitude	Longitude
1	2° 17' 17.4" S	70° 11' 54.4" E
2	2° 20' 12.2" S	70° 21' 35.7" E
3	2° 22' 0.9" S	70° 27' 36.7" E
4	2° 23' 22.1" S	70° 32' 6.2" E
5	2° 23' 54.8" S	70° 33' 54.9" E
6	2° 25' 11" S	70° 38' 8.1" E
7	2° 32' 47.7" S	71° 3' 25" E
8	2° 33' 30.4" S	71° 5' 45.8" E
9	2° 33' 54.7" S	71° 7' 5.8" E
10	2° 35' 21.9" S	71° 11' 53.8" E
11	2° 35' 32.9" S	71° 12' 29.9" E
12	2° 35' 44.1" S	71° 13' 6.9" E
13	2° 36' 43.7" S	71° 16' 22.4" E
14	2° 36' 45.6" S	71° 16' 28.8" E
15	2° 36' 57.7" S	71° 17' 8.4" E
16	2° 39' 43.9" S	71° 26' 34.4" E
17	2° 40' 14.2" S	71° 28' 17.6" E
18	2° 41' 7" S	71° 31' 18.1" E
19	2° 41' 9.9" S	71° 31' 28.2" E
20	2° 42' 23.1" S	71° 35' 37.3" E
21	2° 42' 24.6" S	71° 35' 42.4" E
22	2° 43' 43.1" S	71° 40' 10.2" E
23	2° 43' 52.1" S	71° 40' 41" E
24	2° 43' 54.2" S	71° 40' 48.1" E
25	2° 44' 28.4" S	71° 42' 44.4" E
26	2° 45' 3.7" S	71° 44' 44.3" E
27	2° 47' 19.4" S	71° 52' 25.2" E
28	2° 48' 23.3" S	71° 59' 20.7" E
29	2° 48' 24" S	71° 59' 25.5" E
30	2° 48' 27.1" S	71° 59' 45.3" E
31	2° 49' 4.8" S	72° 3' 49.2" E

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

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

72. In its Memorial, Mauritius stated that it no longer pursues its claim stated in paragraph 28 of its Notification concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention (see operative paragraph 354(7) of the Judgment on Preliminary Objections).

73. In its Counter-Memorial, the Maldives made the following submissions:

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

- (a) Mauritius' claim to a continental shelf beyond 200 M from the base lines from which its territorial sea is measured should be dismissed on the basis that it is:
  - (i) Outside the jurisdiction of the Special Chamber; and/or
  - (ii) Inadmissible;

- (b) The single maritime boundary between the Parties is a series of geodesic lines connecting the following points 1 to 46 as follows:

Point	Latitude	Longitude
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-51.5S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E
18	02-43-54.4S	071-40-48.6E
19	02-44-00.9S	071-41-10.9E
20	02-44-39.2S	071-43-20.8E
21	02-48-42.8S	071-57-08.7E
22	02-49-08.1S	071-58-44.4E
23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E
29	03-00-34.7S	072-44-17.0E
30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E

40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E
43	03-24-17.3S	074-44-21.3E
44	03-26-50.3S	074-57-21.9E
45	03-27-41.7S	075-01-40.6E
46	03-27-59.9S	075-03-12.2E

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

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

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

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

74. In its Rejoinder, the Maldives made the following submissions:

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

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

Point	Latitude	Longitude
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-51.5S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E
18	02-43-54.4S	071-40-48.6E
19	02-44-00.9S	071-41-10.9E
20	02-44-39.2S	071-43-20.8E
21	02-48-42.8S	071-57-08.7E
22	02-49-08.1S	071-58-44.4E
23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E
29	03-00-34.7S	072-44-17.0E
30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E
40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E
43	03-24-17.3S	074-44-21.3E



44	03-26-50.3S	074-57-21.9E
45	03-27-41.7S	075-01-40.6E
46	03-27-59.9S	075-03-12.2E

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

Point	Latitude	Longitude
47 <i>bis</i>	03-20-51.3S	075-12-56.7E

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

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

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

75. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties at the conclusion of the last statement made by each Party at the hearing:

*On behalf of Mauritius:*

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

- a. the Special Chamber has jurisdiction to determine Mauritius' claim to a continental shelf beyond 200 nautical miles and the claim is admissible;
- b. the entire maritime boundary between Mauritius and Maldives in the Indian Ocean, within 200 nautical miles and in the outer continental shelf, connects the 53 points, using geodetic lines, the geographic coordinates for which (in

WGS 1984 datum) are set out on pages 54 and 55 of the Reply of Mauritius.

*On behalf of the Maldives:*

In accordance with Article 75, paragraph 2, of the Rules of the Tribunal, and for the reasons set out during the written and oral phases of the pleadings, the Republic of Maldives requests the Special Chamber to adjudge and declare that:

- (a) Mauritius' claim to a continental shelf beyond 200 M from the base lines from which its territorial sea is measured should be dismissed on the basis that it is:
  - (i) Outside the jurisdiction of the Special Chamber; and/or
  - (ii) Inadmissible.
- (b) The single maritime boundary between the Parties is a series of geodesic lines connecting the points 1 to 46 as set out in the Maldives' Rejoinder at pages 69–70;
- (c) In respect of the Parties' Exclusive Economic Zones, the maritime boundary between them connects point 46 to the point 47*bis* following the 200 M limit measured from the baselines of the Maldives as set out in the Maldives' Rejoinder at page 70;
- (d) In respect of the Parties' continental shelves, the maritime boundary between the Parties continues to consist of a series of geodesic lines connecting the points as set out in the Maldives' Rejoinder at page 70, until it reaches the edge of the Maldives' entitlement to a continental shelf beyond 200 M from the baselines from which the breadth of its territorial sea is measured (to be delineated following recommendations of the Commission on the Limits of the Continental Shelf at a later date).

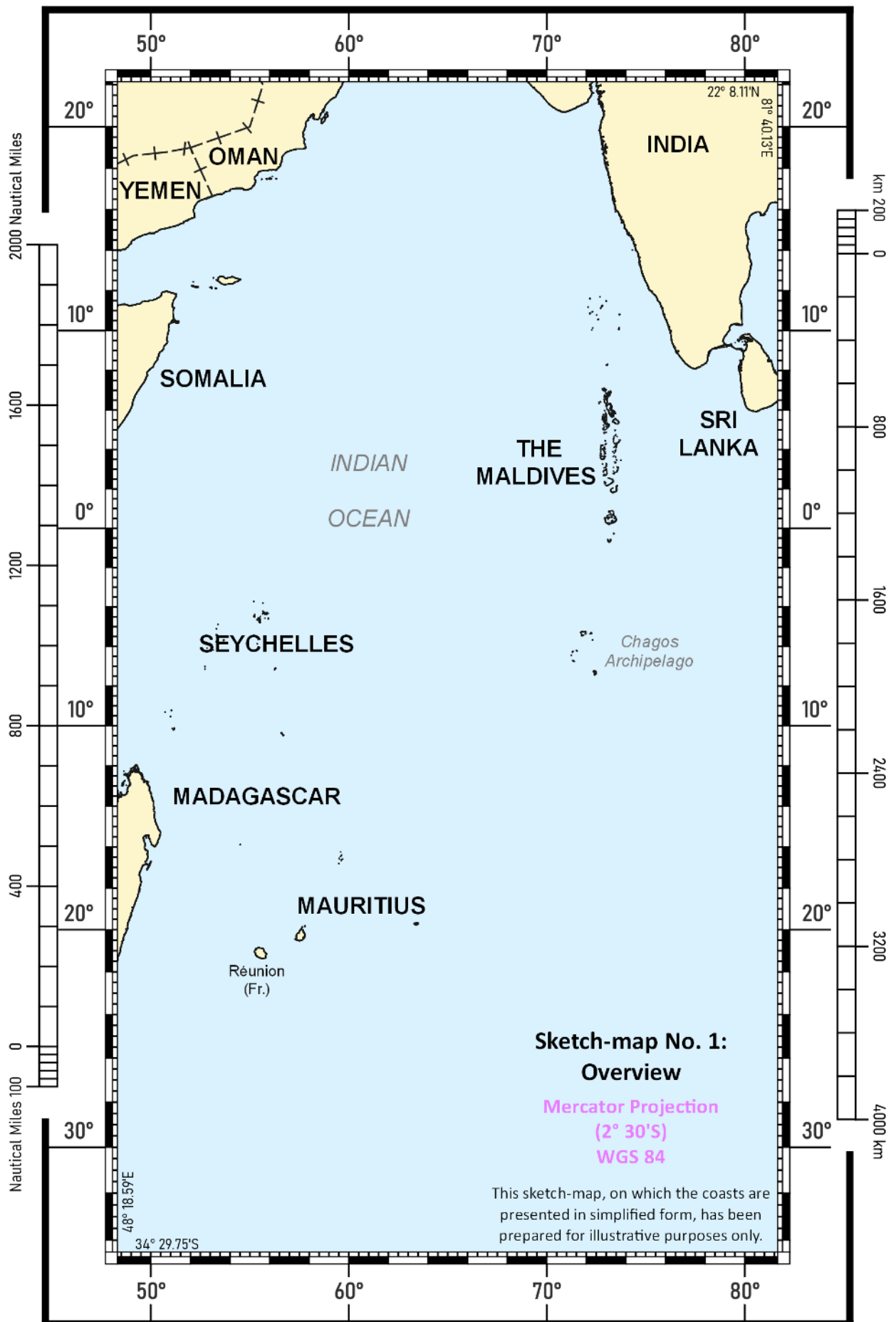
### **III. Geography**

76. The maritime area to be delimited in the present case lies in the Indian Ocean.

77. Mauritius is made up of a group of islands in the south-west and central Indian Ocean. Mauritius states that its territory includes, in addition to its main island and

several other islands, the Chagos Archipelago, which lies south of the Maldives. Mauritius further states that the Chagos Archipelago is composed of various islands, banks and reefs, many of these features clustered together in ring-shaped coral atolls. According to Mauritius, the Chagos Archipelago is located “1,188 M north-east” in relation to the Island of Mauritius, “and, at its closest point, 269 M south of Maldives.”

78. The Maldives’ is situated west-south-west of India and west of Sri Lanka. The Maldives states that its territory consists of an archipelago of 1,190 coral islands which are grouped within 26 atolls. The Maldives further states that the southernmost territory of the Maldives is Addu Atoll, composed of numerous islands. According to the Maldives, the southernmost point of its territory is “located 280 M from the Chagos Archipelago”, while the “main territory of Mauritius is located 1,140 M from the Chagos Archipelago”.



#### IV. Subject matter of the dispute

79. The dispute before the Special Chamber concerns the delimitation of the maritime boundary between Mauritius and the Maldives in the Indian Ocean with respect to the exclusive economic zone and the continental shelf.

#### V. Jurisdiction and admissibility

80. The Special Chamber recalls that, in its Judgment on Preliminary Objections, it found that

it has jurisdiction to adjudicate upon the dispute submitted to it by the Parties concerning the delimitation of the maritime boundary between them in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible; *defers*, however, to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention. (Judgment on Preliminary Objections, at p. 115, para. 354(6))

81. The Special Chamber notes in this regard that the Parties disagree as to the scope of the dispute submitted to it and that of its jurisdiction. The Parties also hold differing views as to the admissibility of Mauritius' claim of entitlement to a continental shelf beyond 200 nm.

82. Mauritius submits that the Special Chamber has jurisdiction to proceed with the delimitation of the maritime boundary between the Parties, both within and beyond 200 nm. It also asserts that its claim to a continental shelf beyond 200 nm in the present proceedings is fully admissible.

83. For its part, the Maldives maintains that the only dispute before the Special Chamber is the delimitation of the maritime boundary in the Parties' exclusive economic zones and continental shelves within 200 nm, and the overlap arising from the Maldives' claim to the continental shelf beyond 200 nm and Mauritius' claim to the exclusive economic zone in the relevant area. The Maldives also contends that Mauritius' claim in respect of its alleged outer continental shelf entitlement is clearly inadmissible.

84. The Special Chamber will examine the objections raised by the Maldives to the jurisdiction to delimit the maritime boundary between the Parties with respect to the continental shelf beyond 200 nm and the admissibility of Mauritius' claim in this regard in paragraphs 276 to 458 below.

## **VI. Applicable law**

85. Both Mauritius and the Maldives are States Parties to the Convention. Mauritius ratified the Convention on 4 November 1994 and the Maldives ratified the Convention on 7 September 2000.

86. Article 23 of the Statute provides that “[t]he Tribunal shall decide all disputes and applications in accordance with article 293” of the Convention. Article 293, paragraph 1, of the Convention reads:

A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

87. Article 74, paragraph 1, and article 83, paragraph 1, of the Convention set out the law applicable to the delimitation of the exclusive economic zone and the continental shelf, respectively. The Parties agree that these provisions are applicable law in the present case.

88. In light of the circumstances of the present case, the Special Chamber considers that other provisions of the Convention, in particular articles 13, 47 and 76, are also relevant.

## **VII. Delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles**

89. The Special Chamber will now proceed to the delimitation of the exclusive economic zone and the continental shelf within 200 nm.

### **A. Applicable law**

90. The Special Chamber notes that the applicable law for the delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts is laid down respectively in article 74, paragraph 1, and article 83, paragraph 1, of the Convention.

Article 74, paragraph 1, reads:

The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

Article 83, paragraph 1, reads:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

The Parties agree that these provisions govern the delimitation of the exclusive economic zone and the continental shelf between them.

### **B. Delimitation methodology**

91. The Special Chamber will now consider the methodology to be applied to the delimitation of the exclusive economic zone and the continental shelf within 200 nm in the present case.

92. Mauritius states that, while having set an equitable solution as the standard for the delimitation of the exclusive economic zone and the continental shelf, the Convention “is silent as to the method to be followed to achieve it.” According to Mauritius, “[t]o endow this standard with specific content” has been “left to States themselves, or to the courts.”

93. Mauritius maintains that in this regard courts and tribunals have identified the three-step analytical framework known as the “equidistance/relevant circumstances method.” In Mauritius’ view, it is designed to “minimise the subjectivity that characterised some of the early delimitation cases”, while also achieving a “high degree of transparency.” Mauritius submits that both the Tribunal and the International Court of Justice (hereinafter “ICJ”) have determined that, “unless it is not feasible or is otherwise inappropriate, the three-step methodology should be applied to achieve an equitable delimitation of the maritime boundary.” Mauritius contends that the geographical circumstances of the present case plainly call for application of the three-step method to delimit the boundary between the Parties in the exclusive economic zone and the continental shelf within 200 nm.

94. For its part, the Maldives states that, in a situation where the distance between opposite coasts of Mauritius and the Maldives is less than 400 nm, a delimitation shall be effected in order to achieve an equitable solution. The Maldives agrees with Mauritius that, absent an agreement, the methodology applied by international courts and tribunals to achieve such a result is “the well-established three-stage equidistance/relevant circumstances methodology.” The Maldives further agrees with Mauritius that this methodology should apply to the delimitation of the Parties’ maritime boundary in the exclusive economic zone and the continental shelf within 200 nm.

\* \* \*

95. The Special Chamber notes that article 74, paragraph 1, and article 83, paragraph 1, of the Convention state the goal to be achieved, namely an “equitable solution”, yet they are silent as to the method to be employed in achieving it.

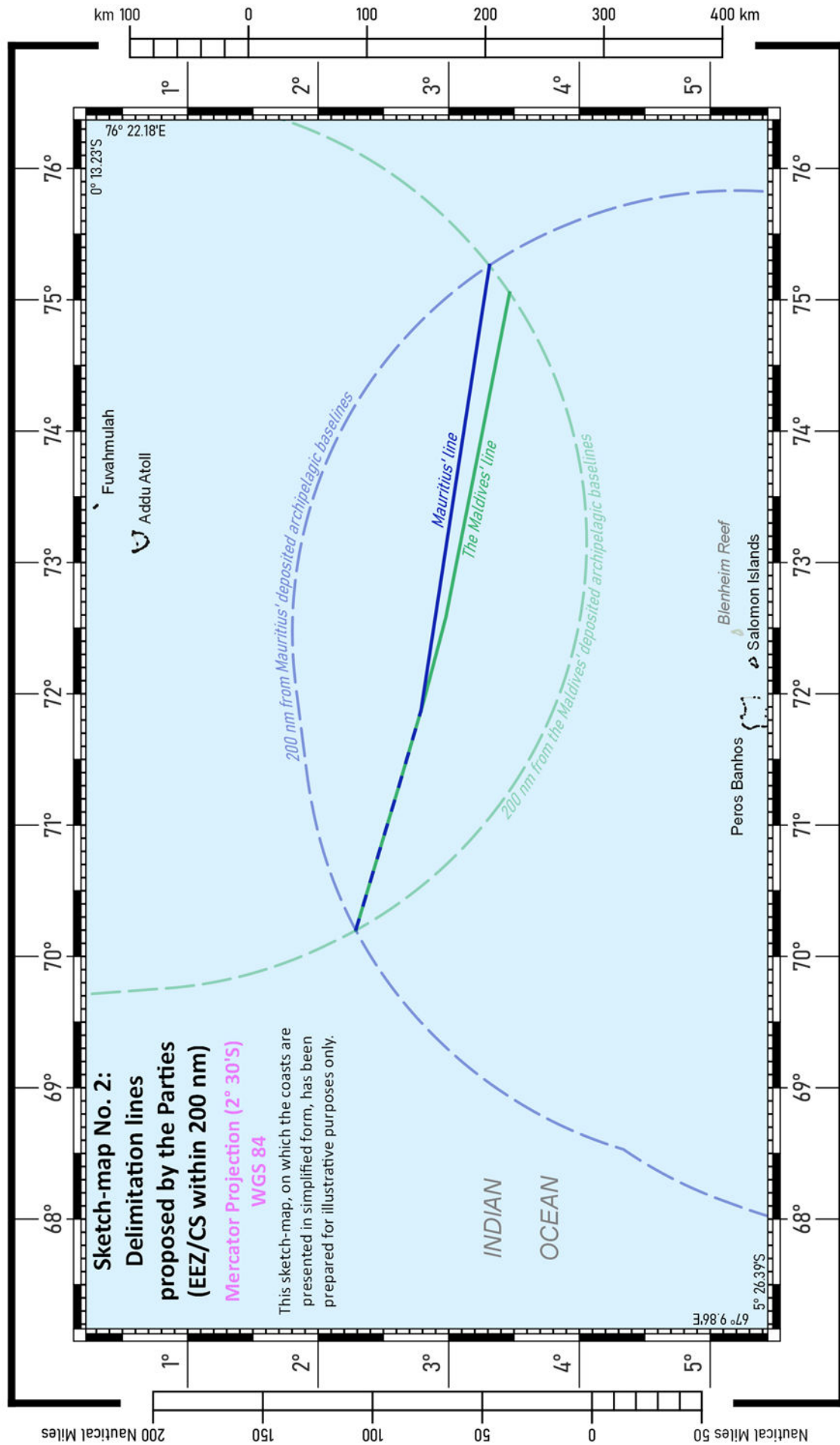


96. The delimitation methodology, however, has been developed over time by international courts and tribunals through a number of cases addressed by them. It is now well established that the methodology to be applied for delimiting the exclusive economic zone and the continental shelf within 200 nm is the “equidistance/relevant circumstances” method, unless recourse to it is not feasible or appropriate. While its application is not mandatory, the equidistance/relevant circumstances method not only leads to an equitable solution in most cases but also brings transparency and predictability to the process of delimitation (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, *Reports of International Arbitral Awards*, Volume XXXII, p. 1 (hereinafter “*Bangladesh v. India*”), at p. 105, para. 339; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, *ITLOS Reports 2017*, p. 4 (hereinafter “*Ghana/Côte d’Ivoire*”), at p. 86, para. 281; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, *I.C.J. Reports 2021*, p. 206 (hereinafter “*Somalia v. Kenya*”), at pp. 251-252, para. 128).

97. The Special Chamber further notes that, in applying the equidistance/relevant circumstances method to the delimitation, international courts and tribunals have developed the three-stage approach, which consists of the first stage of constructing the provisional equidistance line, based on the geography of the coasts of the parties and mathematical calculations; the second stage of determining whether there are any relevant circumstances requiring the adjustment of the provisional equidistance line and, if so, making an adjustment of the provisional equidistance line to ensure an equitable solution; and the third and final stage of checking whether the delimitation line results in any significant disproportion between the ratio of the respective coastal lengths and the ratio of the maritime areas allocated to each party (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, *I.C.J. Reports 2009*, p. 61 (hereinafter “*Romania v. Ukraine*”), at pp. 101-103, paras. 115-122; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, *ITLOS Reports 2012*, p. 4 (hereinafter “*Bangladesh/Myanmar*”), at pp. 67-68, para. 240).

98. The Special Chamber notes that the Parties agree that the delimitation method to be applied in the present case is the equidistance/relevant circumstances

method and the three-stage approach. It sees no circumstances or factors that would make the application of the equidistance/relevant circumstances method inappropriate or unfeasible in this case. The Special Chamber thus finds that the appropriate method to be applied for delimiting the exclusive economic zone and the continental shelf within 200 nm between Mauritius and the Maldives is the equidistance/relevant circumstances method. In applying this method, it will follow the three-stage approach. The Special Chamber will therefore proceed with the construction of the provisional equidistance line based on the coastal geography and mathematical calculations.



### C. Relevant coasts

99. The Special Chamber will first identify the relevant coasts of the Parties in order to determine the area of overlapping claims to be delimited.

#### *Relevant coasts identified by Mauritius*

100. Mauritius maintains that in order to be considered relevant for delimitation, a coast must generate projections which overlap with projections from the coast of the other Party. Therefore, only those portions of a State's coast that generate entitlements that overlap with those of the other State are considered relevant. Mauritius adds that parts of the coast whose extension "cannot overlap with the extension of the coast of the other" are to be excluded.

101. In the present case, Mauritius submits that the entirety of its north-facing coast on Peros Banhos Atoll and Salomon Islands Atoll, including Blenheim Reef, faces the Maldives, and thus constitutes its relevant coast. According to Mauritius, Blenheim Reef, a low-tide elevation, is located within 10.6 nm of a "high-tide feature", Île Takamaka, and cannot be excluded from its relevant coast. Mauritius further argues that Blenheim Reef is proven to be a "drying reef" within the meaning of article 47, paragraph 1, of the Convention, and as such, should be given "*full* entitlement" to an exclusive economic zone and a continental shelf under the "special regime" established by Part IV of the Convention. Mauritius disagrees with the Maldives' inclusion of Nelson's Island in the relevant coast of Mauritius, as the projection generated by Nelson's Island is entirely "subsumed" within that generated by Peros Banhos Atoll and Salomon Islands Atoll.

102. As for the relevant coast of the Maldives, Mauritius claims that the Maldives' south-facing coast on Addu Atoll faces Mauritius and thus constitutes the Maldives' relevant coast. However, Mauritius points out that certain parts of Addu Atoll, namely the extensions at Hithadhoo and between Mulikolhu and Hulhumeedho, should be excluded because these parts of the coast face away from the Chagos Archipelago and thus do not create any overlapping projections. Mauritius further argues that Fuvahmulah, an island which the Maldives includes in its relevant coast, should be

dismissed both because large parts of its coast face away from the area to be delimited and because the overlapping projection generated by the very small portion of its coast is entirely “subsumed” within the coastal projection generated by Addu Atoll.

103. Mauritius accordingly submits that its own relevant coast extends to a distance of 46.8 km along the coast of Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef; and the relevant coast of the Maldives extends to 27.4 km along the southern-facing coast of Addu Atoll.

*Relevant coasts identified by the Maldives*

104. The Maldives contends that an essential step in maritime delimitation is identifying the relevant coasts, namely those that generate projections which overlap with projections from the coast of the other Party. According to the Maldives, this is an “essential step”, because there can be no delimitation where there are no overlapping projections of the relevant coasts.

105. The Maldives submits that all the southern coasts of Addu Atoll, as well as the southern coast of Fuvahmulah, form its relevant coast because all of them generate projections overlapping with projections from the coast of the Chagos Archipelago. In response to Mauritius’ argument that “certain parts of the coastlines of Addu Atoll ... and the coast of Fuvahmulah ... are irrelevant because they do not ‘face’ in the right direction”, the Maldives contends that the judicial practice makes clear that, for the purposes of identifying a State’s relevant coast, account should be taken of not only “frontal” projections but also “radial” projections. The Maldives asserts that all of the coast it identifies as its relevant coast, therefore, generates projections, “frontal and/or radial”, which overlap with Mauritius’ coastal projections. As to Fuvahmulah, the Maldives maintains that Mauritius’ argument, according to which “coasts generating entitlements that are ‘subsumed’ within other coastal projections are to be disregarded”, is contradicted by the jurisprudence and therefore “misplaced.”

106. As to the relevant coast of Mauritius, the Maldives disagrees with Mauritius in two respects. First, the Maldives contends that Blenheim Reef is not part of the

relevant coast for delimitation purposes. According to the Maldives, it is only “the coast *of the territory*” of a State which determines its entitlement to maritime areas. It goes on to state that a low-tide elevation does not form part of “the territory” of the coastal State, and cannot reflect “the terrestrial territorial situation”. Accordingly, in the view of the Maldives, Blenheim Reef, which is a series of low-tide elevations, cannot form part of “the coast of the territory” and there is simply no relevant coast on Blenheim Reef for delimitation purposes. Second, the Maldives disagrees with Mauritius as to the exclusion of Nelson’s Island. In the Maldives’ view, Nelson’s Island should be included as relevant coast of Mauritius for the same reason as set out in relation to Fuvahmulah, namely that it generates an overlapping projection.

107. Accordingly, the Maldives submits that the length of its relevant coast is 39.2 km, not 27.4 km as asserted by Mauritius, and that the length of Mauritius’ relevant coast is 39.9 km, not 46.8 km as calculated by Mauritius.

\* \* \*

108. As the ICJ stated in *Romania v. Ukraine*, “[t]he title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts” (at p. 89, para. 77). Thus, for the task of delimitation in the present case, it is important to determine the coasts of Mauritius and of the Maldives the seaward projections of which overlap. The Special Chamber notes in this regard that the Parties differ as to which part of their respective coasts is relevant.

109. As for Mauritius’ relevant coast, the Special Chamber considers that the whole of the north-facing coastline of Peros Banhos Atoll and Salomon Islands Atoll is relevant, generating projections that overlap with projections from the coast of the Maldives. The Special Chamber further considers that Nelson’s Island also generates such projections and thus constitutes part of the relevant coast of Mauritius. As for Blenheim Reef, the Special Chamber observes that the question of whether Blenheim Reef constitutes part of the relevant coast of Mauritius is linked to the question of whether Blenheim Reef is a site for the selection of appropriate base points for the purpose of the construction of the provisional equidistance line. The

Special Chamber will therefore examine below the question of whether Blenheim Reef forms part of Mauritius' relevant coast in the context of determining Mauritius' base points.

110. Concerning the relevant coast of the Maldives, the Special Chamber finds that the Maldives has correctly identified its relevant coast because all the southern coast of Addu Atoll and the southern coast of Fuvahmulah generate projections, both frontal and radial, which overlap with projections from the north-facing coast of Mauritius.

111. Consequently, the Special Chamber is of the view that the length of Mauritius' relevant coast is approximately 38.2 km (excluding Blenheim Reef) or 40.3 km (including Blenheim Reef) and the length of the Maldives' relevant coast is approximately 39.0 km.

#### **D. Construction of the provisional equidistance line**

112. The Special Chamber will now proceed to the first stage of the three-stage delimitation method, namely, the construction of the provisional equidistance line. To do so, it must first determine the appropriate base points on the relevant coasts of the Parties.

##### **1. Selection of base points**

##### **(a) Parties' selection of base points**

113. Mauritius maintains that there are 13 base points on its coast: nine located on Peros Banhos Atoll and four on Blenheim Reef, a low-tide elevation within 12 nm of Salomon Islands Atoll. Mauritius agrees with all 41 base points on the Maldives' coast, located along the coastline of Addu Atoll, as identified by the Maldives. According to Mauritius, in identifying these points, it has made use of the most commonly employed software, known as "CARIS-LOTS", based on British Admiralty (BA) charts 727 and 2067.

114. For its part, the Maldives notes that the Parties agree on the selection of the 41 base points on its coast. The Maldives does not, however, agree with the base points selected by Mauritius with respect to Mauritius' relevant coast. In particular, the Maldives contends that the four base points located on Blenheim Reef should be rejected as inappropriate and that Mauritius' base points should instead be placed on Peros Banhos Atoll and Salomon Islands Atoll. The Maldives accordingly identifies 12 base points on Peros Banhos Atoll and six base points on Salomon Islands Atoll. The Maldives states that the base points it identifies have been selected using the most commonly employed software, known as "CARIS-LOTS", based on charts 725 and 2067 published by the United Kingdom Hydrographic Office (UKHO).

\* \* \*

115. The Special Chamber notes that both Parties have used BA chart 2067 of the UKHO. Regarding the use of BA chart 725 of the UKHO by the Maldives and BA chart 727 of the UKHO by Mauritius, the Special Chamber notes that both charts were prepared on the basis of the same data. BA chart 727 covers the area of "Peros Banhos to Blenheim Reef including Nelson's Island", while BA chart 725 presents extracts of certain features represented on BA chart 727 (Peros Banhos and Salomon Islands) but at a different scale.

116. The Special Chamber further notes that the Parties agree on the nine base points located on Mauritius' coast on Peros Banhos Atoll and the 41 base points situated on the Maldives' coast on Addu Atoll. However, they differ as to the base points placed by Mauritius on Blenheim Reef. The key issue that divides the Parties is whether Blenheim Reef can be used as the location of base points for the construction of the provisional equidistance line.

117. In this regard, the Special Chamber observes that Mauritius makes two arguments in support of its position that Blenheim Reef is the site for placing appropriate base points for the purpose of delimitation. First, Mauritius argues that Blenheim Reef, as a low-tide elevation under article 13, paragraph 1, of the Convention, forms part of its relevant coast and is also the site of base points. Mauritius describes this argument as "an LTE [low-tide elevation] approach (under



article 13)”. Second, Mauritius contends that Blenheim Reef, which is a drying reef within the meaning of article 47, paragraph 1, of the Convention, is not only a site of base points but should also be given full effect for delimitation purposes. It characterizes this contention as “a drying reefs approach (under article 47)”. According to Mauritius, the result would be the same regardless of the approach – that the four base points selected on Blenheim Reef are appropriate for the construction of the provisional equidistance line.

118. For its part, the Maldives rejects both of Mauritius’ arguments. The Maldives claims that Blenheim Reef does not form part of the relevant coast of Mauritius and is not appropriate for the location of base points. It also asserts that Mauritius’ “new theory” of archipelagic baselines is based on a “misreading of UNCLOS”.

119. The Special Chamber will scrutinize below the Parties’ arguments regarding base points on Blenheim Reef. In this regard, it will address the following three questions that divide the Parties. First, the Special Chamber will consider whether Blenheim Reef, as a low-tide elevation (or low-tide elevations), can be a site of base points. Second, it will consider whether Blenheim Reef, as a drying reef (or drying reefs), can be a site of base points and should be given full effect in the delimitation of the exclusive economic zone and the continental shelf. Third, the Special Chamber will address whether Blenheim Reef is a single low-tide elevation, as Mauritius asserts, or consists of 57 low-tide elevations, many of which are situated beyond 12 nm from the nearest island, Île Takamaka, as the Maldives asserts. Related to this question is whether, in drawing archipelagic baselines in accordance with article 47, paragraph 1, of the Convention, the requirements set out in paragraph 4 of the same article should be applied. The Special Chamber also notes that the third question may be relevant in determining the exact location of the base points if Blenheim Reef can be an appropriate site of base points. However, even if Blenheim Reef cannot be considered a site of base points for the purpose of delimitation, the third question may still be relevant to the present dispute at least to the extent of drawing the 200 nm limit of Mauritius around the Chagos Archipelago. The Special Chamber will address these questions *seriatim*.

- (b) Whether Blenheim Reef as a low-tide elevation (or low-tide elevations) can be a site of base points

120. The Special Chamber will first examine the questions of whether Blenheim Reef forms part of Mauritius' relevant coast and whether Blenheim Reef can be considered a site of base points for the construction of the provisional equidistance line.

*Mauritius' arguments*

121. According to Mauritius, it is indisputable, on the basis of geographic and cartographic evidence, that (1) Blenheim Reef is a low-tide elevation, and (2) part of Blenheim Reef is situated within 12 nm of Mauritius' territorial sea. Mauritius points out that the distance between Île Takamaka and the south-western part of Blenheim Reef is approximately 10.6 nm. It follows, in the view of Mauritius, that Blenheim Reef is a low-tide elevation which "may be used as the baseline for measuring the breadth of the territorial sea", in accordance with article 13, paragraph 1, of the Convention. Mauritius further states that article 5 of the Convention indicates "how to determine the precise location of that baseline." According to Mauritius, the low-water line drawn on Blenheim Reef's northern "coast", which directly faces the Maldives and the area to be delimited, thus forms the relevant coast of Mauritius.

122. In response to the Maldives' argument that "only land territory, including islands, may comprise a State's relevant coast but never a low-tide elevation", Mauritius asserts that "[t]here is no support for this, not in UNCLOS or in the case law." Mauritius refers to a passage in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (hereinafter "*Qatar v. Bahrain*"), which, in its view, confirms that a low-tide elevation, situated wholly or partly within a State's territorial sea, "forms part of the coastal configuration" of that State. According to Mauritius, this makes clear that "a low-tide elevation like Blenheim Reef, within a State's territorial sea, is part of the geographical configuration that determines the State's legal coastline."

123. As regards the selection of base points, Mauritius refers to the jurisprudence of the ICJ to the effect that attention should be paid to “those *protuberant coastal points situated nearest to the area to [be] delimited*” or the “most seaward coastal points ‘situated nearest to the area to be delimited’.” For Mauritius, as a matter of coastal geography, it is undoubted that its “most seaward coastal points ‘situated nearest to the area to be delimited’” include the coastal points on the low-water line of Blenheim Reef. As such, CARIS software employed by Mauritius identified four base points (MUS-BSE-10 to MUS-BSE-13) at Blenheim Reef.

124. Mauritius adds that the drawing of the equidistance line is an objective exercise which should require “no subjectivity or discretion at all”. Mauritius refutes the Maldives’ argument that “[t]he relevant jurisprudence consistently rejects LTEs as location for basepoints.” Mauritius asserts that there is nothing in the Convention or case law which supports such an argument. In its view, whether base points can be placed on a low-tide elevation depends on the geographic circumstances of a particular case and “whether giving effect to a low-tide elevation in those circumstances contributes to, or detracts from, the equitable solution that international law requires.”

125. With respect to the three cases the Maldives relies on to buttress its arguments, Mauritius maintains that none of those cases refers to, or even suggests, the existence of a rule that, “regardless of the geographical circumstances, a low-tide elevation may never be taken into account in drawing a maritime boundary.” To the contrary, Mauritius claims that in every case the treatment given to particular low-tide elevations, or similar maritime features, depended on specific geographic circumstances in that case.

126. Mauritius contends that, in *Qatar v. Bahrain*, the ICJ did not rule that no “delimitation right” could derive from low-tide elevations; to the contrary, its ruling confirms that “such rights could emanate from low-tide elevations, as part of a State’s ‘coastal configuration’ in other circumstances.”

127. Mauritius points out that, in *Bangladesh v. India*, the Annex VII arbitral tribunal chose to disregard a feature within 12 nm of both States’ coastlines, which

Bangladesh called “South Talpatty” and India called “New Moore”, because “it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation.” In such geographic circumstances, Mauritius adds, the arbitral tribunal decided that “[i]f alternative base points situated on the coastline of the parties are available, they should be preferred to base points located on low-tide elevations”.

128. Mauritius contends that *Somalia v. Kenya*, the third case invoked by the Maldives, equally does not support the Maldives’ argument that as a matter of international law, low-tide elevations must never be given base points in maritime delimitation. In Mauritius’ view, there is nothing in this case that says or suggests that base points may not be placed on low-tide elevations for delimitation purposes. Mauritius observes that the general rule articulated by the ICJ is that base points on small maritime features – not only low-tide elevations but also islands – may be deemed appropriate or inappropriate, depending on whether or not they have a “disproportionate effect” on the construction of the equidistance line. Accordingly, Mauritius maintains that, where the effect of the base points is neither disproportionate nor inequitable, there is no reason not to use them for delimitation purposes.

129. With respect to the effects of small coastal features on the equidistance line, Mauritius points out the difference between the situation of two adjacent States and that of two opposite States. According to Mauritius, while those features are more likely to have a pronounced effect on the course of the equidistance line in the former situation, they would have only a modest effect in the latter situation.

130. Mauritius submits that in the present case, “Blenheim Reef does not even begin to affect the equidistance line until a point that is 145 Miles from the Parties’ coasts;” even then, its impact is not felt on the entire equidistance line but only a segment of it; and along that segment, “it pushes the line slightly to the north by no more than 11 Miles at its maximum reach, adding to Mauritius’s side of the boundary only about 4,690 square kilometers, which is less than 5 per cent of the entire area to be delimited.” In Mauritius’ view, therefore, there is neither cut-off of the Maldives’ maritime projections nor inequity to the Maldives.

131. Mauritius further argues that there is a case in which “a provisional equidistance line in respect of overlapping EEZ and continental shelf claims has been drawn by situating a base point on an LTE.” According to Mauritius, this is *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (hereinafter “*Alleged Violations case*”), in which the ICJ recalled:

[I]n plotting a provisional equidistance line, the 2012 Judgment refers to “Edinburgh Reef” as part of the islands located off the coast of Nicaragua and that ... *the Court placed a base point on this feature for the construction of the provisional equidistance line.* (emphasis added by Mauritius)

Mauritius points out that in the 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (hereinafter “*Territorial and Maritime Dispute*”), the ICJ placed a base point on the low-tide elevation for delimitation purposes and used it to construct the provisional equidistance line between Nicaragua and Colombia. Mauritius notes that, in the subsequent *Alleged Violations case*, while the ICJ rejected Nicaragua’s submission that it could place a base point on Edinburgh Reef for purposes of its straight baseline claim, it made it clear that the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimitation are two different issues. In the view of Mauritius, therefore, these cases show that base points can be placed on low-tide elevations for delimitation purposes.

#### *The Maldives’ arguments*

132. For its part, the Maldives submits that Blenheim Reef does not form part of Mauritius’ relevant coast and is not appropriate for the location of base points for the purpose of delimitation. According to the Maldives, in order to apply the three-step methodology, it is necessary, as a preliminary, to determine the relevant coasts. The Maldives argues that the small low-tide elevations which are totally covered by the sea at high tide cannot come “under the heading of relevant coast” of Mauritius for the purpose of maritime delimitation.

133. The Maldives states in this regard that constant jurisprudence stipulates that “the relevant coasts are made of a meeting of terrestrial territory in the sea.” Referring to *Qatar v. Bahrain*, in which the ICJ stated that “[i]t is thus the terrestrial territorial situation that must be taken as a starting point for the determination of the maritime rights of a coastal State”, the Maldives claims that clearly, a low-tide elevation “in no way makes up the terrestrial territory or *terra firma* and cannot be taken into account for the relevant coast of a State.” The Maldives also refers to the arbitral award in the *South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)* (hereinafter “*South China Sea*”), which states that

[w]ith respect to the status of low-tide elevations, the Tribunal considers that notwithstanding the use of the term ‘land’ in the physical description of a low-tide elevation, such *low-tide elevations do not form part of the land territory of a State in the legal sense. Rather they form part of the submerged landmass of the State and fall within the legal regimes for the territorial sea or continental shelf, as the case may be.*

134. Regarding article 13 of the Convention relied upon by Mauritius to support its claim that base points can be placed on Blenheim Reef, the Maldives contends that “low-tide elevations within the 12 nm zone from the closest coast do not, in themselves, generate any entitlement.” Rather, according to the Maldives, what generates entitlement is “the terrestrial territory, the *terra firma*”, located on mainland or an island. The Maldives claims that “[a]rticle 13, paragraph 1 quite simply fixes the possible position of the baseline as of which the extension of the territorial sea can be calculated”. In its view, baselines are not “coasts” capable of generating projections, and this provision does not transform the low-tide elevation into a coast and even less so into “a relevant coast”. The Maldives is thus of the view that article 13 of the Convention cannot be invoked to justify Mauritius’ claim that Blenheim Reef constitutes its relevant coast for the purpose of delimitation.

135. The Maldives submits that base points established to construct the provisional equidistance line can only be on the relevant coasts. It states that in order to bypass this “obstacle”, Mauritius conflates “the points used to draw the baselines, including archipelagic baselines” and “the relevant points for delimitation.” Referring to *Bangladesh v. India* and *Romania v. Ukraine*, the Maldives claims that “[t]he case

law makes clear that the possibility of a coastal State using an LTE within 12 M of its coast to define its baselines is a matter completely distinct from the selection of base points” for the purpose of delimitation. According to the Maldives, it is “the physical geography of the relevant coasts”, not the baseline, which determines the position of the base points. It maintains that the jurisprudence, in this respect, is settled.

136. The Maldives contends that no international court or tribunal has ever placed a base point for the construction of an equidistance line on a low-tide elevation. In this regard, it points out that even for the delimitation of the territorial sea in which the median line is drawn from the “baselines” under article 15 of the Convention and “these lines may lawfully rely on features which are not necessarily on dry land”, no international court or tribunal has placed base points on a low-tide elevation. The Maldives refers to several cases in support of its position that “only the coasts are eligible to ... base points” and that such points “may thus only be located on the coast.”

137. The Maldives submits that in *Qatar v. Bahrain*, the ICJ decided that a low-tide elevation called Fasht al Azm was not, on its own, capable of providing the location for base points for delimitation purposes; and that it was “only if it was *part of an island* that the LTE could be the site of base points for the purposes of delimitation.” The Maldives maintains that in the present case, however, it is clear that Blenheim Reef is not part of any island and therefore cannot be the site of base points.

138. The Maldives also refers to *Bangladesh v. India*, in which the arbitral tribunal suggested that the only situation in which a particular low-tide elevation may be selected as the location of base points, even for carrying out territorial sea delimitation, is where it is “situated on the coastline”. In this case, according to the Maldives, the arbitral tribunal refused to locate any base points on South Talpatty/New Moore Island because, irrespective of whether this feature was a low-tide elevation or permanently submerged, it “could in no way be considered as situated on the coastline”. The Maldives points out that Blenheim Reef can similarly in no way be considered situated on the coastline of the Chagos Archipelago and thus is not eligible for the location of base points.

139. The Maldives submits that, in *Somalia v. Kenya*, the ICJ rejected the proposal to locate a base point on a low-tide elevation, considering it “appropriate to place base points for the construction of the median line solely on solid land on the mainland coasts of the Parties”. According to the Maldives, having rejected certain “tiny maritime features”, including a low-tide elevation, as a site for base points for the delimitation of the territorial sea, the ICJ did not even mention these features for identifying base points for the delimitation of the exclusive economic zone and the continental shelf. The Maldives contends that, similarly, Blenheim Reef is not on solid land and it would be clearly inappropriate to locate a base point upon it.

140. In response to Mauritius’ argument that the ICJ placed base points on Edinburgh Reef in the 2012 Judgment in *Territorial and Maritime Dispute*, the Maldives submits that the ICJ did so because it thought it was an island. According to the Maldives, however, when Colombia raised serious doubts as to Edinburgh Reef being an island in the 2022 *Alleged Violations* case, the ICJ took the view that “Nicaragua has not demonstrated the insular nature of this feature.” The Maldives points out that the ICJ ruled in 2012 that Edinburgh Reef was an island and, as such, found it expedient to place upon it a base point for the construction of a provisional equidistance line, whereas in 2022 the ICJ found that “after due reflection it was not certain at all that this feature was indeed an island.” The Maldives adds that what ICJ ruled in this regard in the *Alleged Violations* case is that Nicaragua had not proved to it that Edinburgh Reef was an island, rather than that Edinburgh Reef is a low-tide elevation. The Maldives accordingly concludes that Mauritius’ argument in this regard turned out to be “a perfect misinterpretation”.

\* \* \*

141. The Special Chamber is of the view that the questions of whether Blenheim Reef forms part of Mauritius’ relevant coast and whether Blenheim Reef can be considered a site of base points are distinct though closely related. Not all parts of a relevant coast are qualified to be a site of base points for the construction of the provisional equidistance line. Only those parts of a relevant coast which meet the geographical and legal criteria can be considered such a site. On the other hand,



appropriate base points for the construction of the provisional equidistance line must be located on the relevant coast.

142. The Special Chamber will first address whether Blenheim Reef forms part of Mauritius' relevant coast. The Parties hold differing views on this question.

143. According to Mauritius, Blenheim Reef is a low-tide elevation situated partly within 12 nm from the nearest island, Île Takamaka, and thus can be used as the baseline for measuring maritime zones, including the exclusive economic zone and the continental shelf. Mauritius argues that, as the projection generated by Blenheim Reef overlaps with the projection of the coast of the Maldives, Blenheim Reef should be included in its relevant coast. For its part, the Maldives contends that Blenheim Reef cannot be a relevant coast because only territory or terrestrial territory can form a relevant coast, and a low-tide elevation is clearly not such territory. The Maldives makes a distinction between coasts and baselines, and points out that under article 13 of the Convention, what generates entitlement is the terrestrial territory situated near to a low-tide elevation, not baselines drawn around a low-tide elevation. The Parties refer to several cases and draw different conclusions from them in support of their respective positions.

144. It is well established that relevant coasts in maritime delimitation refer to those coasts that generate projections which overlap with those of the coast of the other party (*Romania v. Ukraine*, at p. 89, para. 77; *Bangladesh/Myanmar*, at p. 58, para. 198). The Special Chamber recalls in this regard that the notion of relevant coasts serves two purposes: first, to determine the area of overlapping claims to the exclusive economic zone and the continental shelf in the specific context of a case; and, second, to conduct, in the third and final stage of the delimitation process, the test of disproportionality referred to in paragraph 97 above (*Romania v. Ukraine*, at p. 89, para. 78).

145. There are no precise formulas for identifying and calculating relevant coasts for these purposes. In the Special Chamber's view, what is important to consider in identifying a relevant coast is whether the maritime entitlement of one party overlaps with that of the other party.

146. It is evident under article 13 of the Convention that Blenheim Reef, as a low-tide elevation situated partly within 12 nm of Île Takamaka, may be used as a baseline for measuring Mauritius' maritime zones, including its exclusive economic zone and continental shelf. Inasmuch as such maritime zones overlap with those of the Maldives, the Special Chamber considers Blenheim Reef to be relevant in determining the area of overlapping entitlements in the present case and in conducting the test of disproportionality.

147. As the Special Chamber stated at the outset, however, this does not necessarily mean that Blenheim Reef should be considered a site of base points for the purpose of delimitation. Selection of appropriate base points is an exercise distinct from the identification of the relevant coast.

148. While the Parties agree on most of the base points they respectively selected, they differ as to the four base points placed by Mauritius on Blenheim Reef. The Parties describe their disagreement in this regard as the "central dispute" of the present case.

149. Mauritius contends that Blenheim Reef, as the protuberant geographical feature nearest to the area to be delimited, qualifies as a place for base points. It also argues that Blenheim Reef, as a low-tide elevation within the meaning of article 13, is, as a matter of law, entitled to maritime zones and base points for the purpose of delimitation. For its part, the Maldives maintains that Blenheim Reef, as low-tide elevations, does not qualify as a location for base points. The Maldives emphasizes in this regard that no international courts and tribunals have ever placed base points on low-tide elevations for the purpose of delimitation.

150. The Special Chamber recalls at the outset that

while coastal States are entitled to determine their base points for the purpose of delimitation, the Tribunal is not obliged, when called upon to delimit the maritime boundary between the parties to a dispute, to accept base points indicated by either or both of them. The Tribunal may establish its own base points, on the basis of the geographical facts of the case.

(*Bangladesh/Myanmar*, at p. 72, para. 264; see also *Romania v. Ukraine*, at p. 108, para. 137)

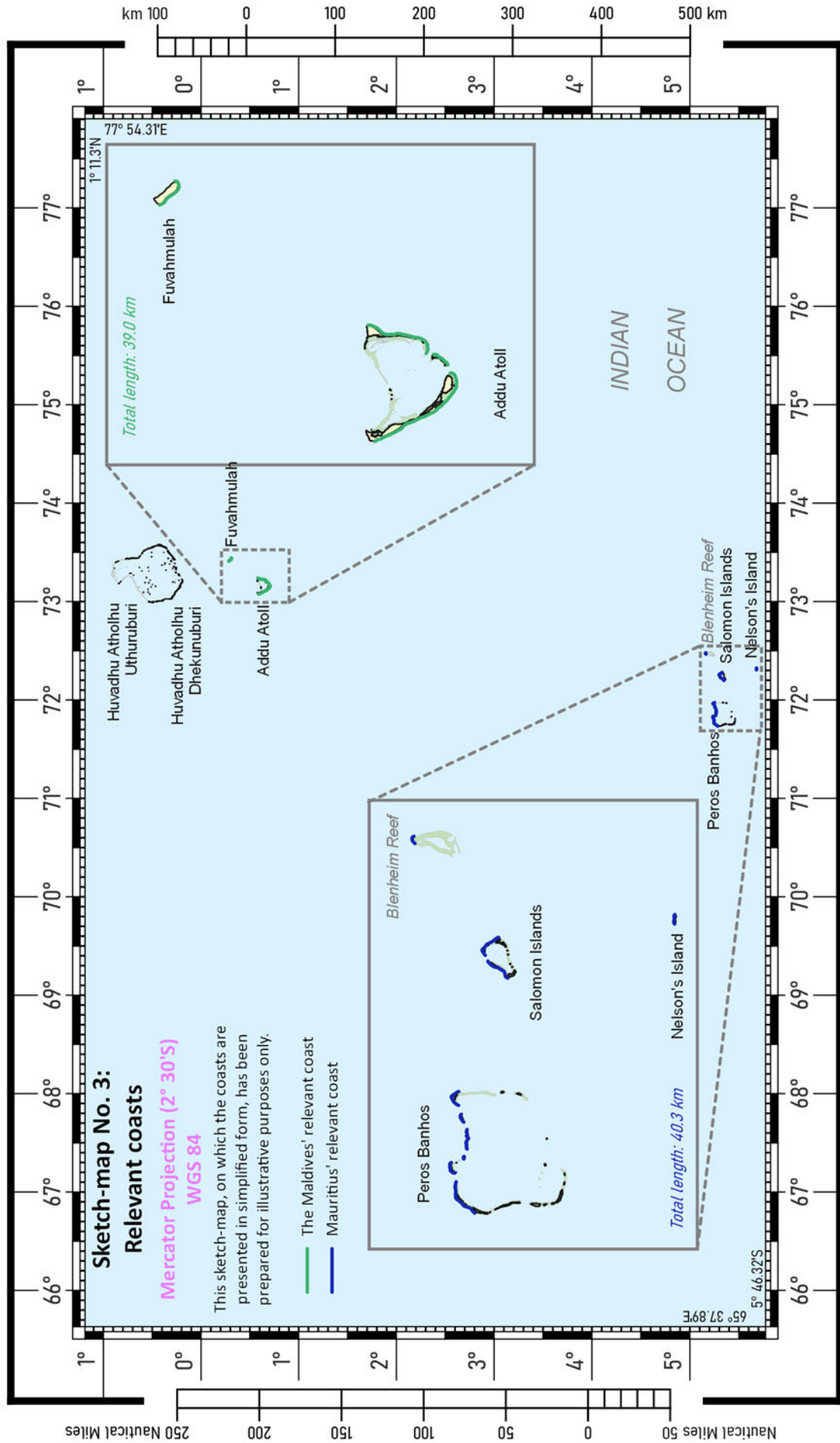
151. The Special Chamber also observes that the selection of base points for the construction of the provisional equidistance line is more than a technical process that can be conducted by digitizing the coastline in the relevant location and operating the appropriate software programme. Base points to be selected should be “appropriate” not only in the sense that they should be situated nearest to the area to be delimited but also in the sense that they should not result in “a judicial refashioning of geography” (*Bangladesh/Myanmar*, at p. 73, para. 265; *Romania v. Ukraine*, at p. 110, para. 149). Even at the first stage of constructing the provisional equidistance line, it is not unusual for certain features to be dismissed as base points, despite their proximity to the area to be delimited, because placing base points on them would lead to a judicial refashioning of geography.

152. On the other hand, the Special Chamber does not consider that there is a general rule which requires that a low-tide elevation be disregarded in selecting base points for the purpose of delimitation. In the Special Chamber’s view, no clear conclusion about the existence of such a rule can be drawn from the cases referred to by the Parties. The selection of base points on a low-tide elevation depends on whether it would be appropriate to do so by reference to the geographical circumstances of the given case. As the Tribunal stated in *Bangladesh/Myanmar*, “[e]ach case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable” (*Bangladesh/Myanmar*, at p. 86, para. 317).

153. At the same time, the Special Chamber cannot fail to notice the jurisprudence, as put forth by the Maldives, in which international courts and tribunals have rarely placed base points on a low-tide elevation for the construction of the provisional equidistance line. They have been disinclined to do so even in the delimitation of the territorial sea, where they may do so under article 15 of the Convention, let alone in the delimitation of the exclusive economic zone and the continental shelf. Thus, the Special Chamber would be hesitant to place base points on Blenheim Reef unless there is a convincing reason to do so.

154. In this regard, the Special Chamber draws its attention to the impact Blenheim Reef would have on the provisional equidistance line if base points were to be placed on it. The Parties agree that base points on Blenheim Reef would control almost half of the provisional equidistance line, resulting in granting to Mauritius approximately 4,690 km<sup>2</sup>, which amounts to 4.9 per cent of the area of overlapping claims to the exclusive economic zone and the continental shelf in the present case. The Parties, however, differ in their respective appreciation of such impact: Mauritius describes it as being “extremely modest” whereas the Maldives characterizes it as “extraordinarily disproportionate”. The Special Chamber considers that the potential impact of Blenheim Reef lies in between the two assessments but is certainly by no means insubstantial. The Special Chamber thus finds it appropriate not to depart from the jurisprudence.

155. Accordingly, the Special Chamber finds that Blenheim Reef, as a low-tide elevation, is not a site for appropriate base points for the construction of the provisional equidistance line.



- (c) Whether Blenheim Reef as a drying reef (or drying reefs) can be a site of base points

156. The Special Chamber will now turn to the second legal basis invoked by Mauritius in support of its submission that Blenheim Reef should be a site of base points for the construction of the provisional equidistance line.

*Mauritius' arguments*

157. In addition to its claim that Blenheim Reef as a low-tide elevation is to be treated as part of Mauritius's regular coast, upon which base points may be placed to construct the provisional equidistance line, Mauritius submits, as the second legal basis, that it is entitled, as a matter of law pursuant to articles 47 and 48 of the Convention, to locate base points on Blenheim Reef. Mauritius submits further that such base points are entitled to full effect for the purpose of delimitation.

158. Mauritius states that the result of the geodetic survey, which it carried out at Blenheim Reef in February 2022, shows the "existence of extensive areas of 'drying reef' ... along the northern, eastern and western flanks of Blenheim Reef's seaward perimeter." According to Mauritius, Blenheim Reef is some 10.6 nm east-north-east of Salomon Islands Atoll; it covers approximately 36 square kilometers; it extends for 9.6 km from north to south, while at its widest point, from east to west, it spans 4.7 km. Mauritius contends that the discovery of extensive areas of drying reef at Blenheim Reef has a significant impact on Blenheim Reef's legal status under the Convention and the maritime area it generates in the context of overlapping maritime entitlements.

159. In this regard, Mauritius notes that article 47, paragraph 1, of the Convention provides that an archipelagic State "may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago", provided that six conditions under article 47 of the Convention are met. Mauritius further notes that it declared itself to be an archipelagic State and drew archipelagic baselines around the Chagos Archipelago, including in the area around Blenheim

Reef, “in compliance with the requirements of Article 47 of the Convention.” According to Mauritius, its archipelagic baselines have been given due publicity and a list of coordinates and accompanying charts were deposited with the Secretary-General of the United Nations on 26 July 2006, pursuant to article 47, paragraph 9, of the Convention. It adds that “three archipelagic base points are located at Blenheim Reef (C83-C85).” Mauritius subsequently clarified in the oral proceedings, in response to the third question posed by the Special Chamber (see paragraph 57 above), that the correct archipelagic basepoints at Blenheim Reef are the four points identified by the CARIS LOTS software which are listed in Table 4.1 of its Memorial (MUS-BSE-10, 11, 12 and 13).

160. In response to the Maldives’ contention that Mauritius has not met the requirement of article 47, paragraph 3, of the Convention, that the “drawing of such [archipelagic] baselines shall not depart to any appreciable extent from the general configuration of the archipelago”, Mauritius argues that there is no requirement for archipelagic baselines to encompass “all” the islands of an archipelago. According to Mauritius, what article 47, paragraph 1, says is only that the “main islands” may not be excluded, and in Mauritius’ case they have not been excluded. In this regard, it asserts that Nelson’s Island, which was excluded from its archipelagic baselines, is not a “main island”, given its size and the lack of any record of human habitation thereon. Mauritius provides four concrete examples of recognized archipelagic States that exclude certain islands, which are significantly larger than Nelson’s Island, from their archipelagic baselines. In all four cases, Mauritius points out, the United States concluded that the archipelagic baselines do “not appear to depart to any appreciable extent from the general configuration of the archipelago.” It notes in this regard that the Maldives appears to be the only State to have objected to Mauritius’ baselines “on the merits.” Mauritius also refutes the Maldives’ argument that archipelagic baselines drawn by Mauritius are invalid because three archipelagic base points are beyond 12 nm of Île Takamaka (see paragraph 176 below).

161. Mauritius makes a distinction between a low-tide elevation and an archipelagic “drying reef” with regard to the “entitlement” to the delimitation. According to Mauritius, “although every ‘drying reef’ may also be characterized as a low-tide elevation, not every low-tide elevation is a ‘drying reef’ within the meaning of

article 47” of the Convention. Mauritius asserts that Blenheim Reef is not only a low-tide elevation within 12 nm of an island for the purpose of article 13, paragraph 1, of the Convention, but also a “drying reef” within the meaning of article 47, paragraph 1.

162. According to Mauritius, this status of Blenheim Reef entails significant consequence when it comes to delimitation because “a drying reef that is located on a properly drawn archipelagic baseline is to be treated like other land having entitlements to a full maritime area.” Mauritius submits in this regard that the phrase “the outermost points of the outermost islands and drying reefs” in article 47, paragraph 1, of the Convention makes no distinction between “islands” and “drying reefs”, either for the purpose of drawing the baseline or for the “entitlements that arise from the location of such baselines.” It argues that “[m]oreover, under article 47(1) – in contrast with article 13 – there is no requirement that the outermost drying reef to be included within the archipelagic baseline be located wholly or partially within 12 Miles of an island or mainland.”

163. Mauritius maintains that its correctly drawn archipelagic baselines are entitled to be given the fullest effect for the purpose of maritime delimitation. In its view, the full effect to be given to Blenheim Reef is plain from the terms of articles 48 and 49 of the Convention.

164. Mauritius refutes the Maldives’ argument that article 48 of the Convention “simply extends to archipelagos the very same rule that is generally applicable to coastal States, namely that the breadth of maritime areas is to be measured from lawfully established baselines.” According to Mauritius, article 48 – and Part IV more generally – does not apply “the very same rule” when it comes to archipelagic baselines. It contends that the provisions of Part IV are plainly different from those of Part II on the territorial sea and the contiguous zone, or Part V on the exclusive economic zone and Part VI on the continental shelf in that those Parts do not include any reference to “drying reefs”, or the entitlements which they generate. Nor do those Parts purport to displace the plain meaning or effect of article 48 of the Convention.



165. Mauritius claims that article 49 of the Convention is equally supportive of its position. This article, in Mauritius' view, extends to the archipelagic State largely the same sovereignty and sovereign rights in its archipelagic waters that it would enjoy in relation to any land territory. Accordingly, Mauritius asserts that pursuant to article 49, Blenheim Reef is to be treated, as a matter of law under the Convention, in a manner that is indistinguishable from land. It further argues that a base point on a "drying reef" used to construct an archipelagic baseline is properly also to be used for the purpose of delimitation.

166. Mauritius maintains that the *Arbitration between Barbados and Trinidad and Tobago* (hereinafter "*Barbados v. Trinidad and Tobago*"), apparently the only maritime delimitation case so far involving an archipelagic State, confirms its view. Mauritius notes that the arbitral tribunal in this case adopted Trinidad and Tobago's archipelagic base points – located on the archipelagic baseline – for the construction of an equidistance line. Mauritius disagrees with the Maldives' view that the arbitral tribunal adopted such base points not because they were archipelagic base points but because they were "appropriate for such purposes". According to Mauritius, such view is not correct upon a close reading of the arbitral award. It further refutes the Maldives' argument that "all [the base points] were islands, well above water at all times." In Mauritius' view, this fact is simply irrelevant, and if there had been "drying reefs", the arbitral tribunal could just as well have chosen the "outermost points of the outermost ... drying reefs" because article 47 draws no distinction between "islands" and "drying reefs" for the purpose of entitlement or delimitation.

#### *The Maldives' arguments*

167. The Maldives contends that, for delimitation purposes, it is irrelevant whether or not a given low-tide elevation is also a "drying reef". According to the Maldives, the geodetic survey conducted by Mauritius simply confirms what was already common ground between the Parties, namely that Blenheim Reef includes "drying reefs", which are above water at low-tide, thus constituting low-tide elevations under article 13 of the Convention.

168. The Maldives submits that what applies to the low-tide elevations, which cannot be seen as being part of the relevant coast, clearly applies also to the drying reefs because these drying reefs are simply a category of low-tide elevations. In the category of low-tide elevations, according to the Maldives, drying reefs are distinguishable only by their “geomorphological specific features”. Therefore, whether low-tide elevations are also drying reefs has no consequence on the construction of the provisional equidistance line.

169. In the Maldives’ view, Mauritius has nonetheless been attempting to claim that “because it is an archipelagic State, the applicable law for the purpose of delimitation is special.” The Maldives contends that Mauritius, in essence, claims that “articles 47 to 49 of the Convention would have the effect of transforming the low-tide elevations that could support an archipelagic baseline into land territory or into an island”.

170. The Maldives asserts that this is not what Part IV of the Convention says. The Maldives contests Mauritius’ argument that article 47 of the Convention draws no distinction between islands and drying reefs for the purpose of entitlements for delimitation. In the Maldives’ view, to the contrary, the Convention makes a fundamental distinction between islands and drying reefs. It asserts that article 47 “does not say, nor does it imply, that as regards archipelagic States a drying reef is like an island.” Furthermore, the Maldives contends that article 47 only addresses the archipelagic baseline; “it says absolutely nothing about delimitation nor about the basepoints that are necessary to construct the provisional equidistance line”.

171. As regards article 48 of the Convention, on which Mauritius also relies in support of its claim that a drying reef is to be treated like “other land having entitlements to a full maritime area”, the Maldives maintains that this provision says only that the breadth of maritime zones is measured from the archipelagic baselines. In the Maldives’ view, it says “absolutely nothing about either what the coast is for the purpose of delimitation, nor about the delimitation of the continental shelf and the EEZ between adjacent or opposite States.”

172. The Maldives argues that Mauritius’ reference to article 49 of the Convention as further support for its claim is equally without merit. In the Maldives’ view, this

provision simply addresses the legal status of archipelagic waters, and it says nothing about maritime delimitation.

173. The Maldives also asserts that *Barbados v. Trinidad and Tobago* provides no support to Mauritius' contention regarding the low-tide elevations at Blenheim Reef. The Maldives points out that there was no question of low-tide elevations in that case and archipelagic base points were situated on significant islands. The Maldives disregards as nothing more than "conjecture" Mauritius' suggestion that the arbitral tribunal would have used the drying reef as a base point for delimitation, had the archipelagic baseline been drawn by Trinidad and Tobago using a drying reef.

174. The Maldives emphasizes that the base points for the construction of the provisional equidistance line and "the points unilaterally chosen by a coastal State in order to establish its baseline", including archipelagic baselines, with a view to measuring the breadth of its territorial sea or other maritime claims, should not be conflated. Consequently, in the Maldives' view, Mauritius' claim to archipelagic baselines has no relevance for the construction of the provisional equidistance line.

175. The Maldives submits, however, that while "the legal validity of Mauritius' claim to archipelagic baselines" is irrelevant to the maritime delimitation in the present case, Mauritius' survey in any case confirms the "invalidity" of its archipelagic baselines. In this regard, the Maldives points out, Mauritius' survey shows that "there are in fact 57 distinct LTEs at Blenheim Reef, only seven of which fall within 12 M of the nearest island (Île Takamaka)." According to the Maldives, "the three points identified by Mauritius from LTEs that are *beyond* 12 M of Île Takamaka", therefore, are clearly invalid for drawing of archipelagic baselines under article 47, paragraph 4, of the Convention, which provides that archipelagic baselines can be drawn from a low-tide elevation within 12 nm of the nearest island. The Maldives adds that the archipelagic baselines claimed by Mauritius depart to an appreciable extent from the general configuration of the "group of islands" forming the Chagos Archipelago because they exclude the Great Chagos Bank and Nelson's Island.

176. In any event, the Maldives maintains that, however Mauritius chooses to draw its archipelagic baselines, the low-tide elevations at Blenheim Reef cannot be a proper location for base points for the purpose of delimitation. It adds that while low-tide elevations are irrelevant for delimitation, they are relevant for measuring the breadth of Mauritius' maritime zones, provided that they are within 12 nm of Île Takamaka.

\* \* \*

177. The Special Chamber observes that while the Parties agree that Blenheim Reef is a drying reef within the meaning of article 47, paragraph 1, of the Convention, they differ, *inter alia*, as to the effect of such status of Blenheim Reef for the delimitation of the exclusive economic zone and the continental shelf between them. Mauritius argues that "archipelagic turning points" around Blenheim Reef are also base points for the construction of the provisional equidistance line and should be given full effect for the purpose of delimitation. For its part, the Maldives contests that Blenheim Reef being a drying reef is of any relevance to delimitation in the present case.

178. The Special Chamber notes at the outset that Mauritius and the Maldives are two of 22 States which have declared themselves archipelagic States in accordance with article 46 of the Convention. The Special Chamber further observes that Mauritius, in its written and oral pleadings, attaches significance to the fact that the present case concerns the delimitation between two archipelagic States. According to Mauritius, Part IV of the Convention on archipelagic States, in particular articles 47, 48 and 49, supports its position that Blenheim Reef is not only a site of base points for the construction of the provisional equidistance line but also should be given full effect for the purpose of delimitation. The Special Chamber thus considers it necessary to examine whether the regime of archipelagic States set out in Part IV of the Convention is of any relevance to the delimitation of the exclusive economic zone and the continental shelf between two archipelagic States.

179. Article 46, paragraph (a), of the Convention defines "archipelagic State" as a State constituted wholly by one or more archipelagos. Such State may include other

islands as well. Under Part IV of the Convention, an archipelagic State enjoys a special status in two respects. First, it is allowed to draw straight archipelagic baselines joining the outermost points of an archipelago instead of drawing baselines around each island in the archipelago. Second, the sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines described as “archipelagic waters”, the air space over such waters, as well as their bed and subsoil, and the resources contained therein.

180. The special regime of archipelagic States is subject to various conditions and obligations. In drawing straight archipelagic baselines, an archipelagic State is required to meet several criteria set out in article 47 of the Convention. In archipelagic waters, the sovereignty of an archipelagic State is exercised subject to Part IV of the Convention, which ensures, among others, navigational rights of other States such as the right of innocent passage and of archipelagic sea lanes passage. In addition, article 51 of the Convention imposes upon an archipelagic State an obligation to respect existing agreements, traditional fishing rights and existing submarine cables in the archipelagic waters.

181. Thus, the legal regime of archipelagic States is based on a balance between the interests of an archipelagic State and of other States. While Part IV of the Convention grants an archipelagic State special status, the scope and content of such status are carefully set out in relevant provisions. An archipelagic State thus cannot claim more than what is accorded to it under those provisions.

182. The Special Chamber now considers whether articles 47, 48 and 49 of the Convention accord Mauritius, as an archipelagic State, any special status with respect to Blenheim Reef for the purpose of delimitation of the exclusive economic zone and the continental shelf.

183. Article 47 of the Convention reads:

*Archipelagic baselines*

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the

archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

184. Article 47 of the Convention essentially addresses the method for drawing straight archipelagic baselines, just as article 7 of the Convention addresses the method for drawing straight baselines in certain localities. According to article 47, appropriate points for archipelagic baselines can be placed on outermost islands and drying reefs. However, there is nothing in article 47 which suggests that such points should also be base points for the construction of the provisional equidistance line or should be given full effect in delimitation of the exclusive economic zone and the

continental shelf. Nor does this article imply that drying reefs should be treated like islands for the purpose of delimitation. The effect to be given to drying reefs, or islands for that matter, in delimitation depends on the particular circumstances of each case.

185. The Special Chamber recalls in this regard that

the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States are two different issues.  
(*Romania v. Ukraine*, at p. 108, para. 137)

The Special Chamber sees no reason why this well-established jurisprudence should not apply in the case of archipelagic States.

186. Article 48 of the Convention provides that the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47. Article 48 reaffirms the general rule that maritime zones are measured from baselines.

187. It is obvious that article 48 of the Convention does not address the question of delimitation. Nor can any implication be drawn from this article to the effect that drying reefs should be the site of base points and given full effect for the purpose of delimitation.

188. Article 49 of the Convention provides for the legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil and the resources contained therein, to which the sovereignty of an archipelagic State extends. This article is plainly of no relevance to the delimitation of the exclusive economic zone and the continental shelf between States with adjacent or opposite coasts. Therefore, it lends no support to Mauritius' claim that Blenheim Reef should be given full effect in delimitation.

189. The Special Chamber observes that there is no specific provision in the Convention which governs the delimitation of maritime zones between archipelagic States. Articles 15, 74, and 83 of the Convention govern the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between archipelagic States as between any other States with opposite or adjacent coasts. Likewise, the jurisprudence developed in applying these articles is as pertinent to the delimitation between archipelagic States as between any other States. This is certainly the case with the distinction between drawing baselines for measuring maritime zones and selecting base points for the construction of the provisional equidistance line. It is one thing to place appropriate points for drawing straight archipelagic baselines at Blenheim Reef, and it is something else to select base points at Blenheim Reef for the construction of the equidistance line.

190. The Special Chamber does not find that *Barbados v. Trinidad and Tobago* referred to by Mauritius in support of its claim is of any relevance to the issue at hand because in that case, base points for constructing the equidistance line were selected at the outermost islands and there was no question of drying reefs or low-tide elevations being the site of such base points.

191. Apart from the question of the validity of the archipelagic baselines drawn at Blenheim Reef, which will be examined in paragraphs 193 to 229 below, the Special Chamber does not consider it necessary in the present case to address the question of the validity of the archipelagic baselines drawn by Mauritius around the Chagos Archipelago. In respect of that question, the Parties are divided and the Special Chamber implies no position by its references to the archipelagic baselines published by the Parties. The main concern of the Special Chamber at this juncture is whether Blenheim Reef can be considered a site of base points and should be given full effect in the delimitation of the exclusive economic zone and the continental shelf between the Parties.

192. For the foregoing reasons, the Special Chamber concludes that Mauritius' second argument based on Blenheim Reef being a drying reef within the meaning of article 47, paragraph 1, of the Convention does not change its previous finding that



no base points can be located on Blenheim Reef for the construction of the provisional equidistance line.

- (d) Whether Blenheim Reef is a single low-tide elevation or comprises multiple low-tide elevations and whether article 47, paragraph 4, of the Convention applies to Blenheim Reef

193. The Special Chamber will now turn to the questions of whether Blenheim Reef is a single low-tide elevation or comprises multiple low-tide elevations and whether the requirements of article 47, paragraph 4, of the Convention apply to Mauritius' archipelagic baselines at Blenheim Reef.

*Mauritius' arguments*

194. Mauritius submits that Blenheim Reef is a single feature, part of which is within 12 nm of Île Takamaka and that, therefore, a base point can be placed on any part of it. For Mauritius, the Maldives' claim that "Blenheim Reef is not a single LTE [but] comprises 57 LTEs, with large gaps between some of them" is "unscientific and unsupportable, as a matter of geography, hydrography and cartography." Mauritius also contends that "[t]here is equally no legal support in UNCLOS or the case law for the claim that each drying patch on a low-tide elevation is to be treated as a separate maritime feature."

195. Mauritius points out in this regard that various nautical charts of Blenheim Reef depict it as a single, consolidated maritime feature. According to Mauritius, this is further confirmed by satellite imagery. It also submits that the photographic depiction of 57 separate maritime features relied on by the Maldives is merely the number of exposed parts of the same feature at a particular point in time. In Mauritius' view, what changes with the tides is "the extent of the single feature that is uncovered at a particular moment in time."

196. In this regard, Mauritius draws the attention of the Special Chamber to the approach of the arbitral tribunal in *South China Sea*, which described Second Thomas Shoal as "a low-tide elevation" even though it had multiple "rocks that are

almost certain to be visible at low water”, and likewise characterized Mischief Reef as “a low-tide elevation”, with “drying rocks” and “rocks exposed during half-tide.” According to Mauritius, “[e]ach of these features was thus regarded as a single low-tide elevation, no matter how many parts were exposed at a given time.”

197. Related to the question of whether Blenheim Reef is a single low-tide elevation or multiple low-tide elevations is the applicability of article 47, paragraph 4, of the Convention to Blenheim Reef. Mauritius submits that this provision is not applicable to Blenheim Reef because it is a drying reef within the meaning of article 47, paragraph 1. In this regard, it points out that article 47, paragraph 1, uses the term “drying reefs” whereas paragraph 4 uses “low-tide elevations”. Mauritius suggests that the use of the different terms in the two paragraphs is not without reason.

198. According to Mauritius, in negotiating this provision at the Third United Nations Conference on the Law of the Sea, the drafters intended to draw a distinction between a low-tide elevation and a drying reef. Mauritius contends that the legislative history of article 47 leads to the “inescapable” conclusion that “the inclusion of drying (coral) reefs as basepoints is not to be limited by the provisions of paragraph 4, but only by [article] 46(b) and by paragraphs 1, 2, 3, and 5 of article 47.”

199. Mauritius asserts that State practice offers “incontrovertible support” to its submission. It refers in this regard to three examples, namely the practice of Fiji, Solomon Islands and Comoros, in which a drying reef or reefs located more than 12 nm from an island, with no lighthouse on it, were utilized as archipelagic baseline turning points on the basis of article 47, paragraph 1, of the Convention. Mauritius points out that there were no objections by other States to such archipelagic baseline systems except for that of Comoros. In the case of Comoros, according to Mauritius, an objection was raised by the United States Department of State, which stated that Banc Vailheu, which was used as a baseline point, is “neither an island nor a low-tide elevation, but rather an underwater feature.”

200. Mauritius concludes that it is therefore entitled to use, as joining points of its archipelagic baselines, those four points close to Blenheim Reef in accordance with article 47, paragraph 1, of the Convention, without being limited by paragraph 4.

*The Maldives' arguments*

201. The Maldives submits that Blenheim Reef comprises 57 low-tide elevations, of which 50 are beyond 12 nm of the nearest island, Île Takamaka. According to the Maldives, the number 57 was reached by simply counting the separate elevations which, according to Mauritius' own data, are "above water at low tide." The Maldives submits that those elevations are separated at low tide by "expanses of sea."

202. In the Maldives' view, Blenheim Reef is a feature, "certain parts of which are surrounded by and above water at low tide"; and each of those parts, taken individually, is an area of land which meets the requirements of a low-tide elevation under article 13, paragraph 1, of the Convention. It asserts in this regard that "[a]ny submerged geological feature which connects those discrete areas of land under the water does not transform them into a single area of land."

203. With respect to the navigational charts referred to by Mauritius to support its claim that Blenheim Reef is a single low-tide elevation, the Maldives considers that those charts, which were produced to ensure safety of navigation, are not optimal for determining the precise dimensions of the low-tide elevations in the area. According to the Maldives, these charts are based on old data and are at a small scale. In addition, it points out, at least one chart (BA chart 3) comes with an express disclaimer about its accuracy.

204. As regards the arbitral award in *South China Sea*, which, as Mauritius notes, treated Mischief Reef and Second Thomas Shoal as a single feature each, the Maldives submits that in that case there was no need for the arbitral tribunal to consider in any great detail the number of distinct low-tide elevations which these features comprise.

205. The Maldives instead refers to *Territorial and Maritime Dispute*, submitting that, in that case, the ICJ agreed with Colombia's approach of "identifying numerous distinct maritime features based on the discrete areas of land which were above water at low tide and high tide". According to the Maldives, the ICJ then found that one of the features at the large bank named Quitasueño is above water at high tide and thus constitutes an island but the other 53 features identified there are low-tide elevations. The Maldives points out that while many of the individual features sat atop a single fringing reef, "[t]he fact of this submerged connection was irrelevant" to identifying the discrete areas of land which qualified as an island and 53 low-tide elevations.

206. As regards the applicability of article 47, paragraph 4, of the Convention to Blenheim Reef, the Maldives submits that this provision applies in drawing archipelagic baselines pursuant to article 47 and thus applies in drawing such baselines at Blenheim Reef.

207. According to the Maldives, it is common ground between the Parties that every drying reef is a low-tide elevation and that Blenheim Reef falls within the definition of low-tide elevations. The Maldives notes in this regard that article 47, paragraph 4, expressly provides that archipelagic baselines shall not be drawn to and from low-tide elevations, except in two circumstances, the relevant one in this case being "where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island."

208. The Maldives disagrees with Mauritius' claim that archipelagic baselines drawn around "drying reefs" pursuant to article 47, paragraph 1, are not constrained by the requirements of article 47, paragraph 4, of the Convention. According to the Maldives, if Mauritius' claim were correct, paragraph 4 would be "deprived of any *effet utile*". The Maldives explains that since article 47, paragraph 1, does not allow the drawing of straight archipelagic baselines at a low-tide elevation which is not a drying reef, paragraph 4 would lose its *effet utile* if it does not apply to drying reefs. The Maldives submits that paragraph 4, therefore, applies necessarily to drying reefs.

209. The Maldives submits that Mauritius' reading of the words, "the outermost islands and drying reefs", in article 47, paragraph 1, as "the outermost islands and outermost drying reefs" in support of its claim is simply "wrong". Referring to the same words in the French text, "*des îles les plus éloignées et des récifs découvrants*", the Maldives argues that the absence of the adjective "outermost" for drying reefs is entirely consistent with imposing the distance constraint upon a low-tide elevation.

210. The Maldives contends that the same conclusion is reinforced by examining "the structure of article 47" of the Convention. It points out that article 47, paragraph 1, provides for "general entitlement" to draw baselines around the outermost islands and drying reefs, and that the subsequent paragraphs, including paragraph 4, provide "a series of qualifications to that general starting point." In the Maldives' view, therefore, "the alternative reading of article 47(1) in isolation, as a stand-alone proviso that baselines may be drawn from drying reefs with zero distance constraint, is not a reasonable reading."

211. The Maldives considers that recourse to the *travaux préparatoires* relied upon by Mauritius is not necessary in light of the interpretation advanced by the Maldives. As for State practice also relied upon by Mauritius, the Maldives considers that the practice was "hardly overwhelming – three isolated examples." In this regard, the Maldives for its part points out an example involving the Dominican Republic's drawing of archipelagic baselines, protested by the United States and the United Kingdom to the effect that if a feature used to draw archipelagic baselines is a drying reef, it must be subject to the requirements laid down in article 47, paragraph 4, of the Convention. In the Maldives' view, this practice is consistent with its position.

212. For these reasons, the Maldives submits that the breadth of Mauritius' exclusive economic zone and continental shelf must be measured using only low-tide elevations situated within 12 nm of Île Takamaka.

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213. The Special Chamber observes at the outset that, since it decides not to place any base points on Blenheim Reef, the question of how to draw Mauritius' straight archipelagic baselines is not directly relevant to the construction of the provisional equidistance line. However, this question still matters in two respects. First, it is relevant for drawing the 200 nm limit of Mauritius, as such limit is to be measured from archipelagic baselines in accordance with article 48 of the Convention. Second, it is also relevant for the purpose of identifying the precise area of overlap between Mauritius' claim to the exclusive economic zone and the Maldives' claim to the continental shelf beyond 200 nm, which the Special Chamber will address below. The Special Chamber recalls that this area was illustrated as evidence of the existence of a dispute between the Parties in the Special Chamber's Judgment on Preliminary Objections (see paragraph 332 of the Judgment).

214. The Special Chamber will now consider whether Blenheim Reef is a single low-tide elevation or a feature comprising multiple low-tide elevations. The Parties agree that, at high tide, Blenheim Reef is completely submerged. On the other hand, the satellite imagery relied upon by the Maldives in support of its claim appears to show a number of areas of land surrounded by and above water at the "lowest astronomical tide". The Special Chamber notes that this imagery was submitted not by the Maldives but by Mauritius, as part of the evidence in support of its claim.

215. The Special Chamber further notes that Mauritius does not deny that Blenheim Reef comprises multiple "parts" or "patches" exposed at low tide. Rather, Mauritius argues that as long as those parts or patches are connected through an "underwater structure", they should be considered a single low-tide elevation. The Maldives disagrees with Mauritius' view, arguing that each part or patch exposed at low tide constitutes a low-tide elevation within the meaning of article 13, paragraph 1, of the Convention.

216. Article 13, paragraph 1, of the Convention defines a low-tide elevation as "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide." The Special Chamber considers that Mauritius' argument

relating to “underwater structure” is not in conformity with the definition of a low-tide elevation. There is nothing in this definition that indicates that separate “parts” or “patches” exposed at low tide, connected through an “underwater structure”, constitute a single low-tide elevation.

217. The Special Chamber recognizes that the navigational charts presented by Mauritius depict Blenheim Reef as a single low-tide elevation. However, the Special Chamber cannot accept such charts as conclusive evidence of Blenheim Reef being a single low-tide elevation, as they were produced not to indicate the detailed dimension of Blenheim Reef but to ensure navigational safety around that area. The Special Chamber also notes that BA chart 727, used by Mauritius to identify its relevant coast, states that Blenheim Reef contains “Numerous Coral Heads”.

218. Nor does the Special Chamber consider that the approach of the arbitral tribunal in *South China Sea* as to Mischief Reef and Second Thomas Shoal sheds much light on the present case because the arbitral tribunal did not attempt to determine the precise dimensions and characteristics of those features. On the other hand, the approach of the ICJ with respect to features situated in Quitasueño in *Territorial and Maritime Dispute* is quite telling, to the effect that low-tide elevations, or islands for that matter, should be identified individually without regard to the subwater structure.

219. While the Special Chamber cannot be certain that there are indeed 57 low-tide elevations at Blenheim Reef, as argued by the Maldives, it is satisfied on the basis of evidence and arguments presented before it that Blenheim Reef consists of a number of low-tide elevations, many of which are situated beyond 12 nm of Île Takamaka.

220. The Special Chamber will now consider whether the requirements of article 47, paragraph 4, of the Convention apply in drawing Mauritius’ archipelagic baselines at Blenheim Reef. The Parties hold opposite views on this question. While Mauritius contends that these requirements do not apply to Blenheim Reef, which is a drying reef within the meaning of article 47, paragraph 1, the Maldives asserts that Blenheim Reef, comprising low-tide elevations, is subject to such requirements and

therefore the 200 nm limit of Mauritius must be measured from only those low-tide elevations situated within 12 nm of Île Takamaka.

221. It is common ground between the Parties that every drying reef is a low-tide elevation. They further agree that Blenheim Reef is a drying reef. There is thus no question that Mauritius may draw straight archipelagic baselines joining the outermost points of outermost islands and drying reefs of the Chagos Archipelago, including Blenheim Reef. Article 47, paragraph 4, of the Convention reads:

Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

222. In the Special Chamber's view, because a drying reef is a low-tide elevation, it is plain that article 47, paragraph 4, which applies to low-tide elevations, should apply when archipelagic baselines are drawn joining the outermost points of outermost islands and "drying reefs".

223. This view is further strengthened by the structure of article 47 on archipelagic baselines. This article comprises nine paragraphs. Paragraph 1 is a general provision under which an archipelagic State may draw straight archipelagic baselines, while the subsequent paragraphs set out specific requirements with which an archipelagic State must comply in drawing such baselines. Given this structure, the Special Chamber does not find it convincing to argue that the requirement set out in paragraph 4 is not applicable to paragraph 1.

224. The Special Chamber recognizes in this regard that article 47, paragraph 1, uses the term "drying reefs", rather than "low-tide elevations" used in paragraph 4. However, this does not necessarily suggest that paragraph 4 is therefore inapplicable to paragraph 1. On the contrary, in the Special Chamber's view, the use of the different terms in paragraphs 1 and 4 may be understood to mean that paragraph 1 permits only drying reefs, not all low-tide elevations, to be eligible for drawing straight archipelagic baselines, but that such drying reefs are subject to the requirements of paragraph 4, as every drying reef is also a low-tide elevation.



225. The Special Chamber notes that Mauritius relies on the *travaux préparatoires* of article 47 of the Convention in support of its view. The Special Chamber need not address the limited role of such work in treaty interpretation as provided in article 32 of the Vienna Convention on the Law of Treaties, as it does not consider that the *travaux préparatoires* in any event clarify the question of the applicability of paragraph 4 to paragraph 1 of article 47.

226. The Special Chamber notes that the Maldives refers to the French text of article 47, paragraph 1, of the Convention, in particular “*des îles les plus éloignées et des récifs découvrants*”, in support of its position that the absence of the adjective “outermost” for drying reefs is entirely consistent with the imposition of the distance criterion upon a low-tide elevation. However, the Special Chamber notes a difference among the authentic texts of the Convention, including between the French and the Spanish texts, with respect to the wording in question. The Special Chamber thus does not consider that the Maldives’ argument based on the recourse to the French text is convincing.

227. The Special Chamber also recognizes the existence of some State practice which appears to conform to Mauritius’ interpretation of article 47 of the Convention. However, it is of the view that such practice is relatively isolated and does not appear to be consistent, as shown by the Maldives.

228. The Special Chamber cannot fail to notice some inconsistency as to this question even in Mauritius’ own pleadings. In its Reply, Mauritius lists “six objective criteria” which an archipelagic State must meet in drawing archipelagic baselines and claims that it has complied with all of them. One of those objective criteria listed by Mauritius is the requirement of article 47, paragraph 4, of the Convention. Mauritius states that “[its] archipelagic baselines comply with the requirements of Article 47(4) of UNCLOS” (see Reply of Mauritius, para. 2.44). Mauritius has not fully addressed this inconsistency in the oral proceedings.

229. In light of the foregoing, the Special Chamber considers that the requirements of article 47, paragraph 4, apply in drawing archipelagic baselines in accordance with

article 47, paragraph 1, of the Convention. Accordingly, the 200 nm limit of Mauritius must be measured from a low-tide elevation of Blenheim Reef that is situated wholly or partly within 12 nm of Île Takamaka.

(e) Conclusion

230. For the foregoing reasons, the Special Chamber concludes that Blenheim Reef cannot be considered a site of base points for the construction of the provisional equidistance line. On the other hand, the Special Chamber finds that a low-tide elevation of Blenheim Reef, situated wholly or partly within 12 nm of Île Takamaka, can be used as a baseline for measuring the 200 nm limit of Mauritius.

231. The Special Chamber observes that not all base points submitted by the Parties are necessarily relevant to the construction of the provisional equidistance line within 200 nm. Some of those base points are superseded by neighbouring base points because of the configuration of the coastline and the resulting geometric proximity of the base points. Some other base points are not relevant to delimitation within 200 nm, as they would only take effect beyond that limit.

232. All coordinates used by the Special Chamber in this Judgment are given by reference to WGS 84 as geodetic datum.

233. The Special Chamber accordingly selects the base points for the construction of the provisional equidistance line as follows:

- On the side of Mauritius, the Special Chamber is satisfied that the following 16 base points on the relevant coast of Mauritius, i.e., 11 on Peros Banhos Atoll and five on Salomon Islands Atoll, are appropriate base points. The list of Mauritius' base points is as follows:

<b>Base Point</b>	<b>Latitude</b>	<b>Longitude</b>
MUS-1	5° 14' 51.0" S	71° 45' 44.8" E
MUS-2	5° 14' 49.1" S	71° 45' 48.6" E
MUS-3	5° 14' 48.2" S	71° 45' 52.2" E

MUS-4	5° 14' 10.4" S	71° 49' 07.0" E
MUS-5	5° 14' 07.7" S	71° 49' 26.1" E
MUS-6	5° 14' 06.8" S	71° 49' 36.7" E
MUS-7	5° 14' 06.6" S	71° 49' 39.9" E
MUS-8	5° 14' 06.4" S	71° 49' 43.4" E
MUS-9	5° 14' 17.8" S	71° 57' 49.1" E
MUS-10	5° 14' 17.9" S	71° 57' 50.7" E
MUS-11	5° 14' 18.0" S	71° 57' 51.5" E
MUS-12	5° 17' 57.4" S	72° 15' 17.8" E
MUS-13	5° 17' 57.9" S	72° 15' 19.6" E
MUS-14	5° 17' 58.6" S	72° 15' 20.6" E
MUS-15	5° 18' 28.9" S	72° 15' 56.2" E
MUS-16	5° 18' 29.5" S	72° 15' 56.6" E

- On the side of the Maldives, the Special Chamber is satisfied that 31 base points on Addu Atoll, listed by Mauritius and not disputed by the Maldives, are appropriate base points. The list of the Maldives' base points is as follows:

<b>Base Point</b>	<b>Latitude</b>	<b>Longitude</b>
MDV-1	0° 40' 30.7" S	73° 07' 00.2" E
MDV-2	0° 40' 33.8" S	73° 07' 02.2" E
MDV-3	0° 40' 37.0" S	73° 07' 04.3" E
MDV-4	0° 40' 38.6" S	73° 07' 05.4" E
MDV-5	0° 41' 10.7" S	73° 07' 34.1" E
MDV-6	0° 41' 12.1" S	73° 07' 35.4" E
MDV-7	0° 41' 17.5" S	73° 07' 40.6" E
MDV-8	0° 41' 35.5" S	73° 07' 58.4" E
MDV-9	0° 41' 36.9" S	73° 07' 59.8" E
MDV-10	0° 41' 38.2" S	73° 08' 01.1" E
MDV-11	0° 41' 40.3" S	73° 08' 03.5" E
MDV-12	0° 41' 54.4" S	73° 08' 20.8" E
MDV-13	0° 42' 11.6" S	73° 08' 44.4" E
MDV-14	0° 42' 12.8" S	73° 08' 46.1" E
MDV-15	0° 42' 20.3" S	73° 08' 59.5" E
MDV-16	0° 42' 21.1" S	73° 09' 01.2" E

MDV-17	0° 42' 22.7" S	73° 09' 05.1" E
MDV-18	0° 42' 23.1" S	73° 09' 07.3" E
MDV-19	0° 42' 24.5" S	73° 09' 20.7" E
MDV-20	0° 42' 24.8" S	73° 09' 25.0" E
MDV-21	0° 42' 24.8" S	73° 09' 27.1" E
MDV-22	0° 42' 24.7" S	73° 09' 38.6" E
MDV-23	0° 42' 24.6" S	73° 09' 40.6" E
MDV-24	0° 42' 24.0" S	73° 09' 44.2" E
MDV-25	0° 42' 23.2" S	73° 09' 48.1" E
MDV-26	0° 42' 22.7" S	73° 09' 50.0" E
MDV-27	0° 42' 16.6" S	73° 10' 05.9" E
MDV-28	0° 42' 15.9" S	73° 10' 07.7" E
MDV-29	0° 42' 14.9" S	73° 10' 09.4" E
MDV-30	0° 41' 37.9" S	73° 11' 05.9" E
MDV-31	0° 41' 35.6" S	73° 11' 09.1" E

## 2. Provisional equidistance line

234. The Special Chamber will now construct the provisional equidistance line from the base points it has identified in paragraph 233 above.

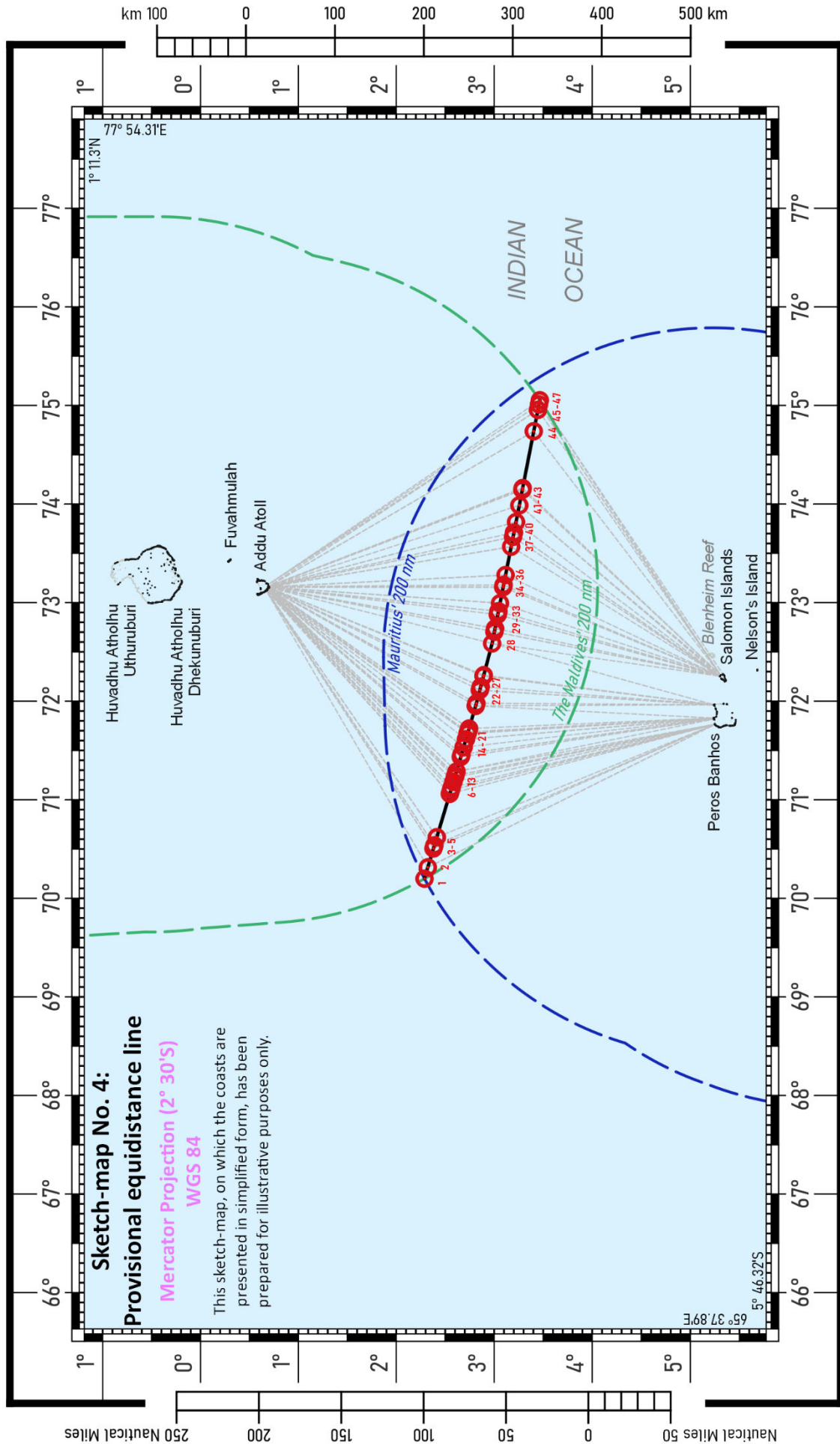
235. The provisional equidistance line starts, in the west, at a point of intersection between the 200 nm limits of Mauritius and the Maldives. The 200 nm limits of the Parties in the area relevant to this delimitation should be measured from the respective archipelagic baselines published by each Party, with the exception of the archipelagic baselines at Blenheim Reef. For Blenheim Reef, the 200 nm limit should be measured from the northern intersection point of the low-water line of Blenheim Reef with the 12 nm limit measured from the low-water line of Île Takamaka.

236. The provisional equidistance line runs in an easterly direction until it reaches the 200 nm limit of the Maldives. It is defined by the following turning points at which the direction of the line slightly changes and which are connected by geodetic lines:

Point	Latitude	Longitude
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PEL-1 (Western Starting Point)	2° 17' 21.4" S	70° 11' 56.2" E
PEL-2	2° 19' 22.8" S	70° 18' 51.4" E
PEL-3	2° 22' 50.0" S	70° 30' 19.8" E
PEL-4	2° 23' 24.5" S	70° 32' 14.3" E
PEL-5	2° 24' 54.3" S	70° 37' 12.6" E
PEL-6	2° 32' 51.5" S	71° 03' 37.4" E
PEL-7	2° 33' 32.3" S	71° 05' 52.1" E
PEL-8	2° 34' 02.5" S	71° 07' 31.9" E
PEL-9	2° 35' 03.2" S	71° 10' 52.1" E
PEL-10	2° 35' 51.5" S	71° 13' 31.2" E
PEL-11	2° 36' 13.8" S	71° 14' 44.4" E
PEL-12	2° 36' 14.4" S	71° 14' 46.5" E
PEL-13	2° 36' 58.6" S	71° 17' 11.3" E
PEL-14	2° 39' 35.3" S	71° 26' 05.2" E
PEL-15	2° 40' 03.3" S	71° 27' 40.6" E
PEL-16	2° 41' 18.7" S	71° 31' 58.1" E
PEL-17	2° 42' 43.4" S	71° 36' 46.5" E
PEL-18	2° 43' 45.9" S	71° 40' 19.8" E
PEL-19	2° 43' 54.4" S	71° 40' 48.6" E
PEL-20	2° 44' 00.9" S	71° 41' 10.9" E
PEL-21	2° 44' 39.2" S	71° 43' 20.8" E
PEL-22	2° 48' 43.1" S	71° 57' 09.5" E
PEL-23	2° 49' 08.1" S	71° 58' 44.4" E
PEL-24	2° 51' 14.8" S	72° 06' 42.4" E
PEL-25	2° 51' 48.4" S	72° 08' 49.6" E
PEL-26	2° 53' 30.5" S	72° 15' 15.1" E
PEL-27	2° 53' 39.8" S	72° 15' 50.3" E
PEL-28	2° 58' 46.5" S	72° 35' 08.8" E
PEL-29	3° 00' 10.6" S	72° 42' 14.8" E
PEL-30	3° 00' 34.7" S	72° 44' 17.0" E
PEL-31	3° 02' 14.4" S	72° 52' 42.8" E
PEL-32	3° 02' 38.6" S	72° 54' 45.5" E
PEL-33	3° 03' 36.6" S	72° 59' 39.2" E
PEL-34	3° 05' 32.8" S	73° 09' 26.0" E

PEL-35	3° 05' 48.8" S	73° 10' 46.8" E
PEL-36	3° 07' 00.6" S	73° 16' 48.5" E
PEL-37	3° 10' 26.2" S	73° 34' 04.3" E
PEL-38	3° 11' 37.1" S	73° 40' 01.4" E
PEL-39	3° 12' 08.4" S	73° 42' 39.1" E
PEL-40	3° 13' 24.8" S	73° 49' 03.6" E
PEL-41	3° 15' 26.2" S	73° 59' 15.1" E
PEL-42	3° 17' 17.3" S	74° 08' 42.7" E
PEL-43	3° 17' 29.5" S	74° 09' 44.8" E
PEL-44	3° 24' 17.3" S	74° 44' 21.3" E
PEL-45	3° 26' 50.3" S	74° 57' 21.9" E
PEL-46	3° 27' 29.7" S	75° 00' 40.2" E
PEL-47	3° 27' 59.9" S	75° 03' 11.9" E



## **E. Relevant circumstances**

237. The Special Chamber will now proceed to the second stage of the three-stage approach, in which it will determine whether any relevant circumstances exist requiring an adjustment of the provisional equidistance line established in paragraph 236 above in order to achieve an equitable solution.

238. Mauritius submits that there is no relevant circumstance for the purpose of the second stage of the delimitation process. However, it states that its submission is based on the assumption that Blenheim Reef is used for placing base points for the construction of the provisional equidistance line.

239. According to Mauritius, its proposed equidistance line allows for the Parties' opposite coasts to produce their effects, in terms of maritime entitlement, "in a reasonable and mutually balanced fashion." Therefore, neither party is cut-off from its maritime entitlements to any significant degree.

240. Regarding the Maldives' claim that if base points are located on Blenheim Reef, this would result in an "extraordinarily disproportionate effect", requiring southward adjustment of the provisional equidistance line, Mauritius contends that giving full effect to Blenheim Reef impacts "only 4.9%" of the area of overlapping entitlements within 200 nm. Given the existence of drying reefs along 70 per cent of the 27.2 km circumference of Blenheim Reef, Mauritius asserts, "[t]here is nothing disproportionate about such a significant feature giving rise to an entitlement for Mauritius of approximately 4,690 km<sup>2</sup>." Mauritius acknowledges that this is an impact, but, in its view, it is "an extremely modest one" by any reasonable standard and it is certainly not an "extraordinarily disproportionate effect" as claimed by the Maldives.

241. For its part, the Maldives maintains that in the present case there are no relevant circumstances calling for an adjustment of its proposed equidistance line.

242. The Maldives submits, however, that "[i]f ... the provisional line constructed at the first stage were to use base points located on Blenheim Reef ..., this would have



such a disproportionate effect that an adjustment would be required at the second stage.” According to the Maldives, the provisional equidistance line proposed by Mauritius is determined largely by base points on Blenheim Reef, “a feature far less significant than an island since it is an LTE, not forming part of and wholly disconnected from Mauritius’ terrestrial territory.” The Maldives adds that those base points would control more than half of the provisional equidistance line proposed by Mauritius, generating 30 out of the 52 “equidistant” points on the provisional equidistance line and consequently granting Mauritius “an additional 4,690 km<sup>2</sup> of maritime area” compared to what it would have if Blenheim Reef were discounted. In the Maldives’ view, this would attribute to Blenheim Reef “an extraordinarily disproportionate effect.”

\* \* \*

243. The Special Chamber notes that both Parties consider that there are no relevant circumstances requiring adjustment of the provisional equidistance line on the assumption that their proposed lines would be accepted by the Special Chamber. The Special Chamber further notes, however, that the Parties make significantly differing assessments of the impact of Blenheim Reef on the provisional equidistance line if Blenheim Reef were to be accepted as a site of base points for its construction. While Mauritius considers such impact to be an “extremely modest one”, the Maldives claims that base points on Blenheim Reef would entail an “extraordinarily disproportionate effect”.

244. It should be noted that the purpose of the second stage of the delimitation process is to examine whether there are any relevant circumstances requiring the adjustment of the provisional equidistance line, drawn from the selected base points, in order to ensure an equitable solution. The Special Chamber decided at the first stage of the delimitation process not to select any base point on Blenheim Reef, given the jurisprudence according to which international courts and tribunals have rarely placed base points on a low-tide elevation for the construction of the provisional equidistance line. It also considered that the effect Blenheim Reef would have on the provisional equidistance line if base points were to be placed on it would by no means be insubstantial.

245. However, the Special Chamber considers at this stage that ignoring Blenheim Reef completely would not lead to an equitable solution in the present case, given the presence of extensive areas of drying reefs as shown by the geodetic survey carried out by Mauritius. It also notes that such drying reefs amount to “other natural features” within the meaning of article 46(b) of the Convention and, together with a group of islands and interconnecting waters, form the Chagos Archipelago. The Special Chamber thus finds that Blenheim Reef constitutes a relevant circumstance in this case, requiring an adjustment of the provisional equidistance line drawn in paragraph 236 above.

246. Regarding the object and method of the adjustment, the Special Chamber recalls that

the objective is a line that allows the relevant coasts of the Parties “to produce their effects, in terms of maritime entitlements, in a reasonable and mutually balanced way”.

(*Bangladesh/Myanmar*, at p. 87, para. 326)

The Special Chamber further recalls that

there are various adjustments that could be made within the relevant legal constraints to produce an equitable result. As the Arbitral Tribunal observed in the *Arbitration between Barbados and Trinidad and Tobago*, “[t]here are no magic formulas” in this respect.

(*Bangladesh/Myanmar*, at p. 88, para. 327)

247. The Special Chamber decides that in light of the geographical circumstances in the present case, the adjustment should give half effect to Blenheim Reef in the following way: the adjustment starts at point 3° 07' 28.9" S and 73° 19' 11.0" E; and from this point the line should continue as a geodetic line until the endpoint in the east, which is the intersection of the 200 nm limits of the Parties. As indicated in paragraph 235 above, the 200 nm limit of Mauritius is drawn from the archipelagic baselines of Mauritius except in the area around Blenheim Reef. For Blenheim Reef, the 200 nm limit should be measured from the northern intersection point of the low-water line of Blenheim Reef with the 12 nm limit measured from the low-water line of Île Takamaka.

## F. The delimitation line

248. The delimitation line for the exclusive economic zones and the continental shelves of the Parties within 200 nm starts at Point 1 with coordinates 2° 17' 21.4" S and 70° 11' 56.2" E, the intersection point of the 200 nm limits of Mauritius and the Maldives, measured from archipelagic baselines published by each Party.

249. The delimitation line runs in an easterly direction until it reaches Point X (Point 37) with coordinates 3° 07' 28.9" S and 73° 19' 11.0" E. This section of the delimitation line is defined by the following turning points at which the direction of the line slightly changes and which are connected by geodetic lines:

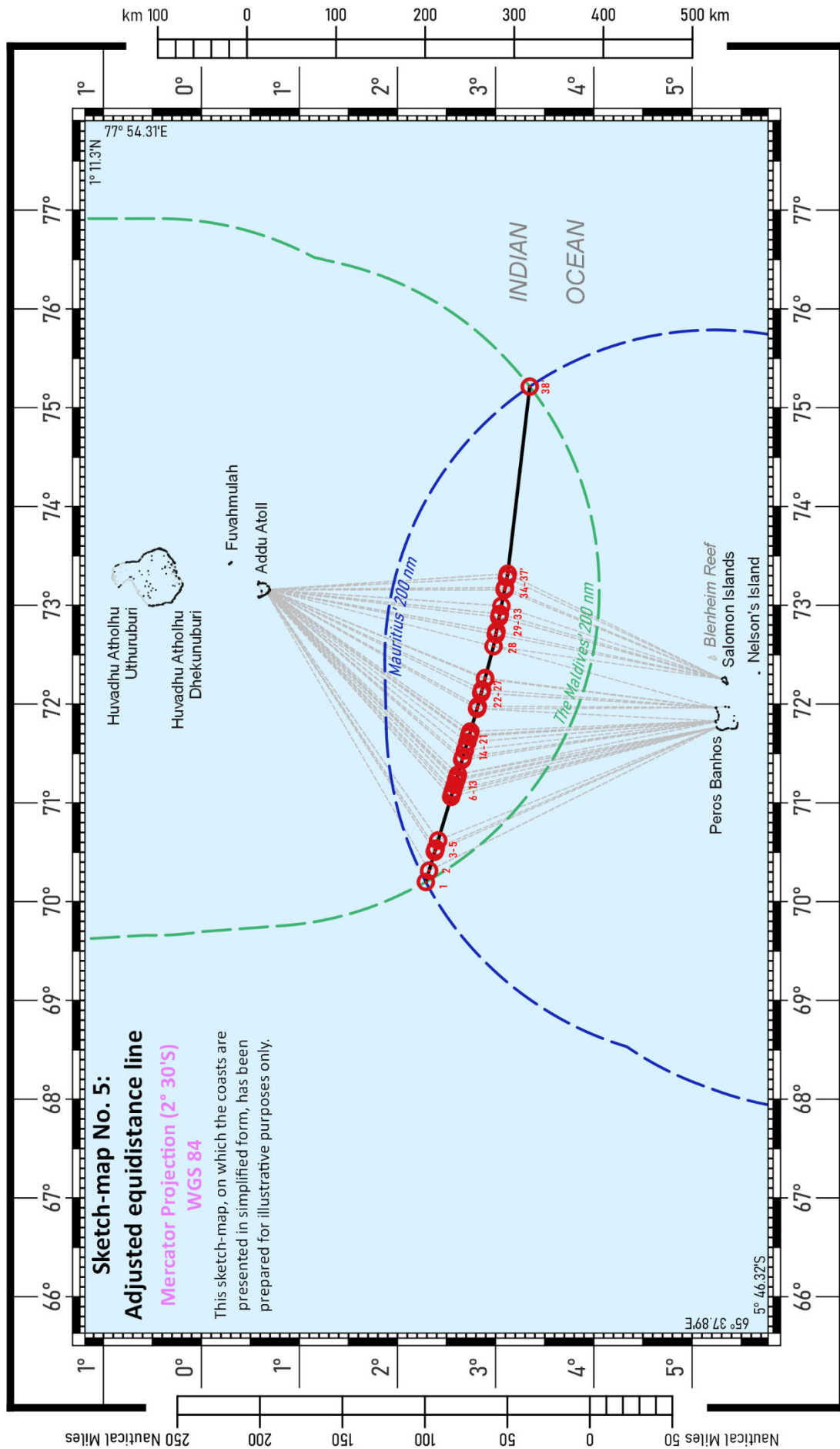
Point	Latitude	Longitude
1 (Western Starting Point)	2° 17' 21.4" S	70° 11' 56.2" E
2	2° 19' 22.8" S	70° 18' 51.4" E
3	2° 22' 50.0" S	70° 30' 19.8" E
4	2° 23' 24.5" S	70° 32' 14.3" E
5	2° 24' 54.3" S	70° 37' 12.6" E
6	2° 32' 51.5" S	71° 03' 37.4" E
7	2° 33' 32.3" S	71° 05' 52.1" E
8	2° 34' 02.5" S	71° 07' 31.9" E
9	2° 35' 03.2" S	71° 10' 52.1" E
10	2° 35' 51.5" S	71° 13' 31.2" E
11	2° 36' 13.8" S	71° 14' 44.4" E
12	2° 36' 14.4" S	71° 14' 46.5" E
13	2° 36' 58.6" S	71° 17' 11.3" E
14	2° 39' 35.3" S	71° 26' 05.2" E
15	2° 40' 03.3" S	71° 27' 40.6" E
16	2° 41' 18.7" S	71° 31' 58.1" E
17	2° 42' 43.4" S	71° 36' 46.5" E
18	2° 43' 45.9" S	71° 40' 19.8" E
19	2° 43' 54.4" S	71° 40' 48.6" E
20	2° 44' 00.9" S	71° 41' 10.9" E
21	2° 44' 39.2" S	71° 43' 20.8" E

22	2° 48' 43.1" S	71° 57' 09.5" E
23	2° 49' 08.1" S	71° 58' 44.4" E
24	2° 51' 14.8" S	72° 06' 42.4" E
25	2° 51' 48.4" S	72° 08' 49.6" E
26	2° 53' 30.5" S	72° 15' 15.1" E
27	2° 53' 39.8" S	72° 15' 50.3" E
28	2° 58' 46.5" S	72° 35' 08.8" E
29	3° 00' 10.6" S	72° 42' 14.8" E
30	3° 00' 34.7" S	72° 44' 17.0" E
31	3° 02' 14.4" S	72° 52' 42.8" E
32	3° 02' 38.6" S	72° 54' 45.5" E
33	3° 03' 36.6" S	72° 59' 39.2" E
34	3° 05' 32.8" S	73° 09' 26.0" E
35	3° 05' 48.8" S	73° 10' 46.8" E
36	3° 07' 00.6" S	73° 16' 48.5" E
37 (Point X)	3° 07' 28.9" S	73° 19' 11.0" E

250. From Point X (Point 37), the delimitation line follows a geodetic line until it reaches Point Y (Point 38) with coordinates 3° 20' 54.8" S and 75° 12' 52.1" E, at which the 200 nm limits of Mauritius and the Maldives intersect in the east.

<b>Point</b>	<b>Latitude</b>	<b>Longitude</b>
38 (Point Y)	3° 20' 54.8" S	75° 12' 52.1" E

For Blenheim Reef, the 200 nm limit is measured from the northern intersection point of the low-water line of Blenheim Reef with the 12 nm limit measured from the low-water line of Île Takamaka.



## **G. The test of disproportionality**

251. The Special Chamber will now proceed to the third and final stage of the delimitation process, in which it will check whether there is any significant disproportion between the ratio of the lengths of the relevant coasts of the Parties and the ratio of the areas allocated to them.

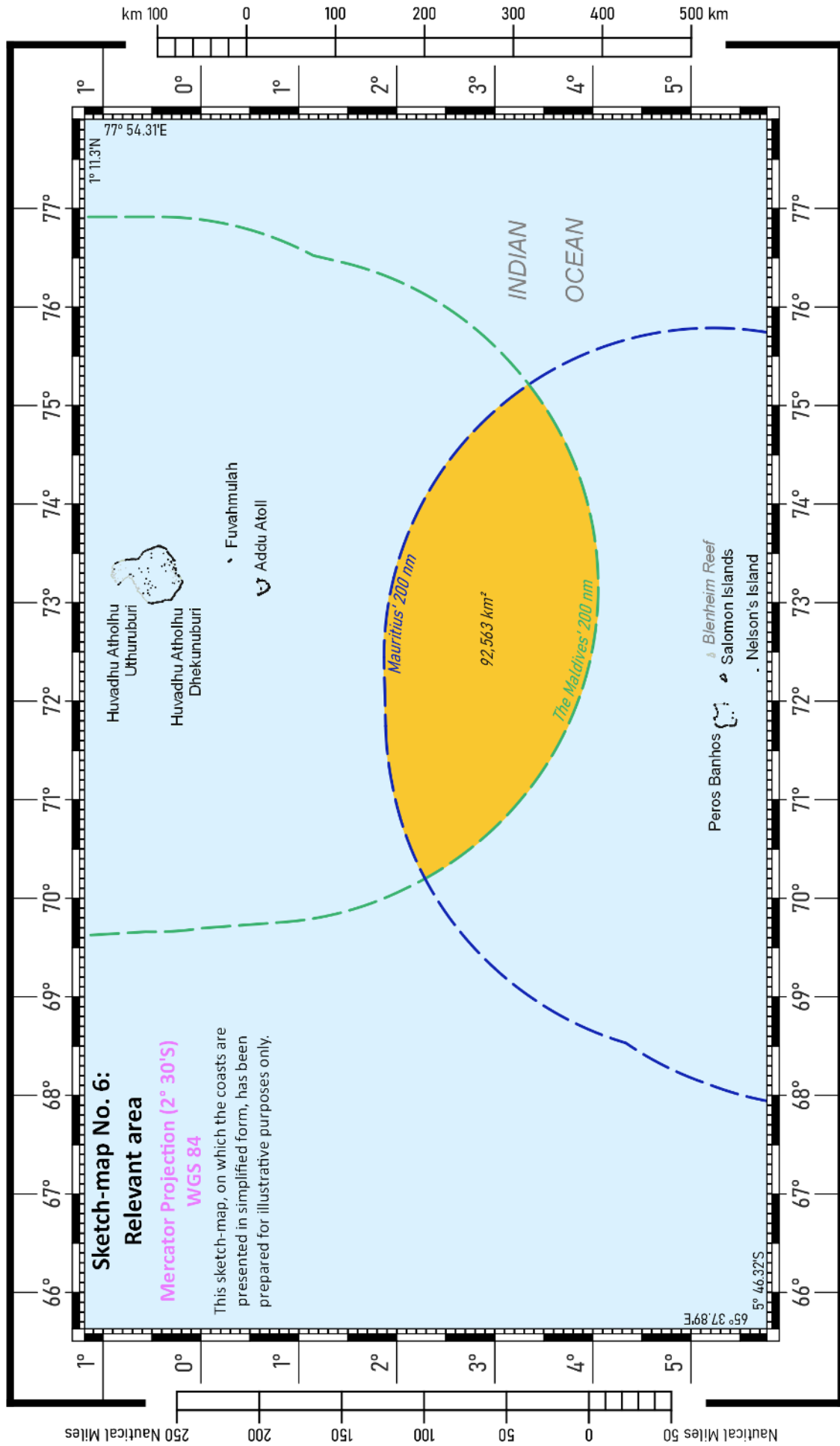
252. The Special Chamber notes in this regard that the test of disproportionality is not to ensure a strictly proportionate result but to check for any significant disproportion that would render the delimitation inequitable. The Special Chamber also notes that mathematical precision is not required in the calculation of either the relevant coasts or the areas to be allocated to the Parties (*Bangladesh/Myanmar*, at p. 123, para. 477).

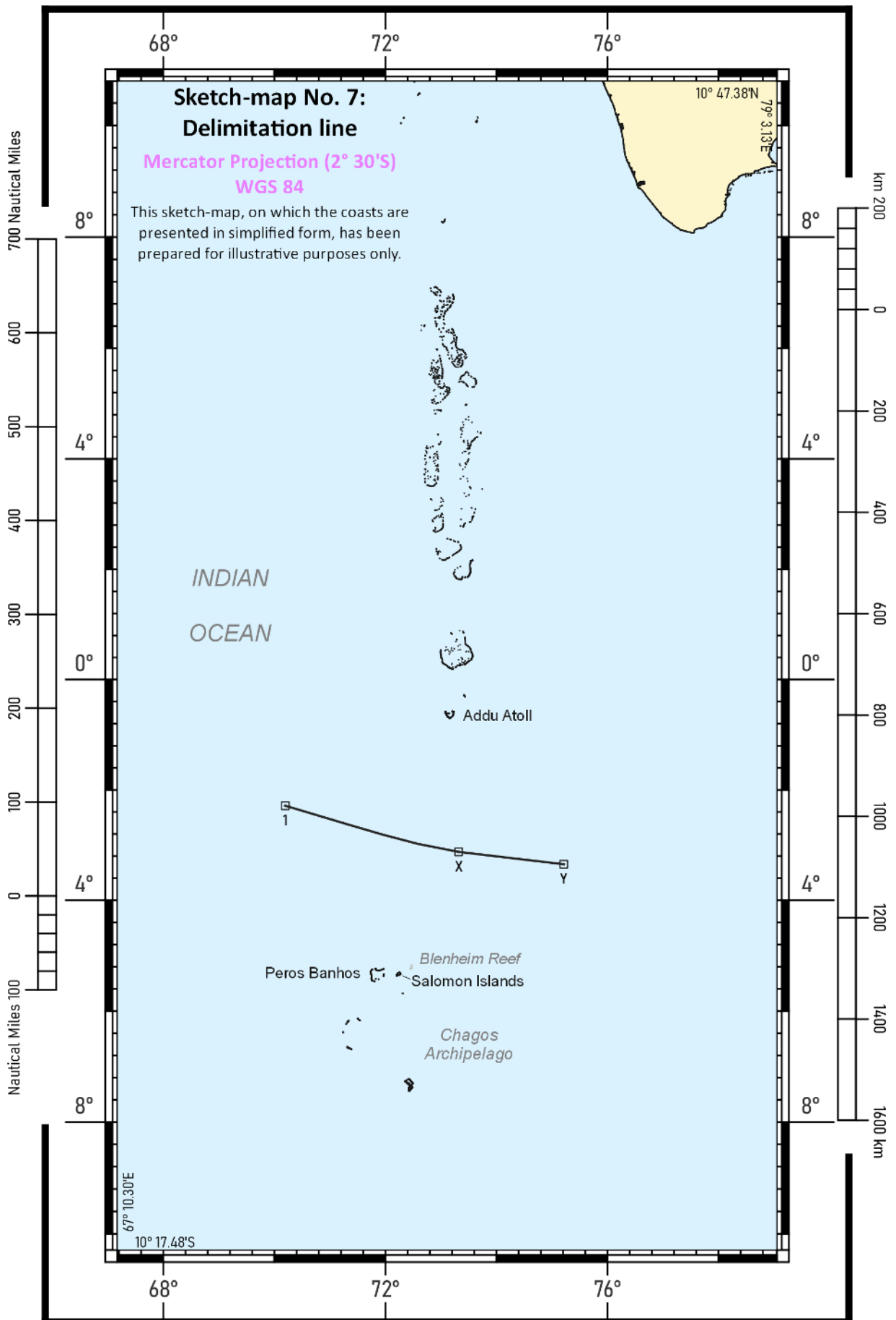
253. The Special Chamber has already measured the lengths of the Parties' relevant coasts (see paragraph 111 above): Mauritius' relevant coast is 40.3 km and the Maldives' relevant coast is 39.0 km. Thus, the ratio of the lengths of the relevant coasts of the Parties is 1:1.033 in favour of Mauritius.

254. Regarding the relevant area, the Parties agree that it consists of the area where their maritime entitlements overlap. In the present case, the relevant area comprises the area of overlap resulting from the maritime entitlements of both Parties up to a distance of 200 nm. Accordingly, the size of the relevant area is calculated to be approximately 92,563 km<sup>2</sup>.

255. The delimitation line referred to in paragraphs 248 to 250 above allocates to Mauritius 45,331 km<sup>2</sup> and to the Maldives 47,232 km<sup>2</sup>. Thus, the ratio of the areas allocated to the Parties is 1:0.960 in favour of the Maldives.

256. The Special Chamber finds that there is no significant disproportion between this ratio and the ratio of the lengths of the respective coasts of the Parties.







**VIII. The Maldives' claim of entitlement to a continental shelf beyond 200 nautical miles and within the 200 nautical mile limit of Mauritius**

257. The Special Chamber recalls that in paragraph 332 of the Judgment on Preliminary Objections, it stated that “there is an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area.” Therefore, there are overlapping claims to the continental shelf between the Parties in this area.

258. The Maldives takes the view that the Special Chamber can exercise its jurisdiction to carry out delimitation of the continental shelf in the area of the Parties' overlapping entitlements and that it should be done in the form of constructing a directional equidistance line. Mauritius, on the other hand, refutes that the Maldives' entitlement to a continental shelf beyond 200 nm may extend within the 200 nm limit of Mauritius.

259. The Special Chamber notes that the overlap in question occurred when the Maldives made its submission to the Commission on the Limits of the Continental Shelf (hereinafter “CLCS” or “the Commission”) in 2010. According to the Maldives, “the outer limit [of its continental shelf] extends to (but does not overlap with) the maritime area claimed with respect to the BIOT [British Indian Ocean Territory] by the United Kingdom, which administered the Chagos Archipelago in 2010”, and “Blenheim Reef ... was not used as a site for base points in the construction of the BIOT maritime areas.” In the executive summary of its submission, the Maldives stated that “the area of extended continental shelf contained in the Submission is not the subject of any dispute between it and any other coastal State(s).” However, Mauritius had, in its Maritime Zones (Baselines and Delineating Lines) Regulations 2005, issued pursuant to the 2005 Maritimes Zones Act, set out the geographical coordinates of the base points for drawing the baselines from which the maritime zones of Mauritius should be determined. The coordinates included the base points for the Chagos Archipelago, *inter alia*, on Blenheim Reef, resulting in its claimed exclusive economic zone extending further north than the United Kingdom/BIOT maritime claim. The coordinates were deposited with the Secretary-General of the

United Nations on 20 June 2008. Since the Maldives did not take the coordinates of Mauritius into account in its submission to the CLCS, an overlap occurred.

### *Mauritius' arguments*

260. Mauritius, referring to the Maldives' claim to an outer continental shelf that overlaps with the maritime space that falls within 200 nm of the baselines of Mauritius, and in response to the first part of the second question posed by the Special Chamber (see paragraph 57 above) as to whether the Maldives' entitlement to the continental shelf beyond 200 nm can be extended into the 200 nm limit of Mauritius, states that "[t]his, Maldives cannot do." It argues that, during the maritime boundary negotiations between the Parties that took place on 21 October 2010, the Maldives expressly recognized that it could not do this.

261. Mauritius contends that the minutes of this meeting, signed by the Minister of Foreign Affairs of the Maldives, Dr Ahmed Shaheed, "memorialize that the Parties discussed Maldives' submission to the CLCS, which had improperly claimed an outer continental shelf entitlement within 200 Miles of the baselines of Mauritius." It notes that the minutes record that Minister Shaheed "said that the Expert working on the submission of Maldives has acknowledged that in the submission to the CLCS the [EEZ] coordinates of the Republic of Mauritius in the Chagos region were not taken into consideration."

262. Mauritius states that, "[h]aving acknowledged Maldives' error, its Minister of Foreign Affairs undertook to correct it." It notes in this regard that the minutes record that Minister Shaheed "assured the Mauritius side that this would be rectified by an addendum to the submission of the Republic of Maldives which would be prepared by the Expert in consultation with the Government of the Republic of Mauritius."

263. Mauritius asserts that, "[r]egrettably, Maldives did not fulfil that promise." It maintains that, in light of these events, and to answer the second part of the Special Chamber's second question (see paragraph 57 above) directly, "the primary relevance of the 21 October 2010 meeting is, one, Maldives' acceptance that it is improper to claim an outer continental shelf entitlement within 200 Miles of the

baselines of Mauritius; and, two, Maldives' related undertaking not to pursue an OCS [outer continental shelf] claim in that area, an undertaking that is inconsistent with Maldives' pursuit of such a claim before the Special Chamber."

264. According to Mauritius, the Maldives has been unable to explain how its assurance could mean anything other than that the Maldives had committed itself to fixing or correcting its failure to "use" Mauritius' baselines in the 2010 submission when determining the outer limits of its outer continental shelf claim. Mauritius states that the consequence of the Maldives' "further failure" to fulfil its undertaking is that its outer continental shelf claim encroaches slightly into the 200 nm limit of Mauritius. In the view of Mauritius, "[t]he Special Chamber should not countenance this claim." It argues that, "[i]ndeed, if Maldives were entitled to claim an outer continental shelf within 200 Miles of the baselines of Mauritius, so too could Mauritius, correspondingly, claim an outer continental shelf that encroaches within 200 Miles of Maldives."

#### *The Maldives' arguments*

265. The Maldives states that what characterizes the relevant dispute is overlapping claims to continental shelf rights: "on the part of the Maldives, its [outer continental shelf] entitlement, and, on the part of Mauritius, its entitlement to a continental shelf within 200 M from its baselines." According to the Maldives, what the Special Chamber is requested to determine with respect to this particular aspect of the dispute is the delimitation between the Parties' respective continental shelves in the area of overlapping entitlements.

266. The Maldives contends that the Special Chamber is able to undertake this delimitation in the form of constructing a directional equidistance line. It argues that "[t]his is because the Maldives' entitlement to a continental shelf extending beyond 200 M has been set out in its (timely) submission to the CLCS, such entitlement is agreed between the Parties, and the delimitation of the [relevant] area ... is not predicated on a particular *delineation* of the Maldives' [outer continental shelf] following CLCS recommendations."

267. According to the Maldives, the “grey area”, which arises as a consequence of the delimitation, denotes a very small area of some 244 km<sup>2</sup> north of the equidistance line where, following the delimitation, the Maldives has continental shelf rights, by virtue of its outer continental shelf claim, and Mauritius has exclusive economic zone rights. It adds that it is an area on the Maldives’ side of the delimitation line, located beyond 200 nm from the coast of the Maldives but within 200 nm from the baselines, validly drawn, of Mauritius. In the view of the Maldives, “[c]onsistent with the approach taken in the *Bay of Bengal* cases, in such circumstances a grey area may be identified.”

268. The Maldives, in response to the first part of the second question posed by the Special Chamber (see paragraph 57 above), confirms its position that its entitlement to the continental shelf beyond 200 nm from its baseline can be extended into the 200 nm limit of Mauritius. The Maldives submits that the foot of slope point, on which it relies in this regard, is clearly within its 200 nm limit and located on its side of the equidistance line, properly drawn.

269. In response to the second part of the second question, the Maldives contends that the statement relating to the rectification of its submission to the CLCS is not relevant to the question of whether the Maldives’ outer continental shelf entitlement can extend into the 200 nm limit of Mauritius.

270. In this regard, the Maldives argues that the minutes provide no information as to what the “rectification” might comprise and that there is certainly no record of the Maldives recognizing as a matter of legal principle that it could not extend its outer continental shelf claim into the 200 nm limit of Mauritius.

271. The Maldives maintains that what is clear as a matter of legal principle is that a statement offered during inconclusive negotiations that fail to resolve interrelated issues cannot be taken into account. It refers to the statement of the Permanent Court of International Justice in the *Case Concerning the Factory at Chorzów* that the court “cannot take into account declarations, admissions or proposals which the Parties may have made during direct negotiations between themselves, when such negotiations have not led to a complete agreement.” In the Maldives’ view, as the

negotiations between the Parties did not lead to a “complete agreement”, nothing said in the meeting can be taken as reflective, let alone constitutive, of any legal obligation on the part of the Maldives.

272. The Maldives concludes that, to the extent that any rectification had to be made, it would be a rectification in accordance with international law.

\* \* \*

273. The Special Chamber observes that the disagreement between the Parties concerns delimitation of the area of overlap between the claim of the Maldives to a continental shelf beyond 200 nm and the claim of Mauritius to a 200 nm zone. Related to this question is the issue of whether the Maldives’ claim of entitlement to a continental shelf beyond 200 nm may extend within the 200 nm limit of Mauritius.

274. In this regard, the Special Chamber notes that it has delimited the exclusive economic zones and continental shelves within 200 nm as between the Parties by drawing a single maritime boundary, the endpoints of which are each at the intersection of the 200 nm limits of the Parties (see paragraphs 248 to 250 above). The boundary so drawn leaves no areas to be further delimited within the 200 nm limit of either Party. It should be recalled in this regard that “[a]rticle 76 of the Convention embodies the concept of a single continental shelf” (*Bangladesh/Myanmar*, at p. 96, para. 361). Consequently, neither Party may claim or exercise sovereign rights or jurisdiction with respect to the exclusive economic zone or the continental shelf within the 200 nm limit of the other Party on the latter’s side of the boundary. Therefore, the boundary has the effect of rendering moot the question of delimitation of the area of overlap between the claim of the Maldives to a continental shelf beyond 200 nm and the claim of Mauritius to a 200 nm zone.

275. In light of the foregoing, the Special Chamber is not required to address the question whether the Maldives has an entitlement to a continental shelf beyond 200 nm in the relevant area or the question whether the Maldives’ entitlement to a continental shelf beyond 200 nm may extend within the 200 nm limit of Mauritius. Nor is it necessary for the Special Chamber to address the question whether the

aforementioned assurance of the Minister of Foreign Affairs of the Maldives at the meeting between the Parties on 21 October 2010, reflected in the minutes of the meeting, constitutes a legally binding undertaking.

## **IX. Delimitation of the continental shelf beyond 200 nautical miles**

276. The Special Chamber will now turn to the question of the delimitation of the continental shelf beyond 200 nm.

277. The Special Chamber notes at the outset the Maldives' contention that Mauritius' claim of entitlement to the continental shelf beyond 200 nm is neither within the Special Chamber's jurisdiction nor admissible. In this regard, the Maldives raises four objections to the jurisdiction of the Special Chamber and the admissibility of Mauritius' claim. First, the Maldives argues that Mauritius' claim of entitlement to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region is outside the Special Chamber's jurisdiction because no dispute as regards such entitlement existed at the time Mauritius filed its Notification. Second, the Maldives contends that Mauritius' claim is inadmissible because it has failed to make a timely CLCS submission regarding the Northern Chagos Archipelago Region. Third, the Maldives asserts that Mauritius' claim is manifestly unfounded under article 76 of the Convention and is therefore inadmissible. Fourth, the Maldives submits that Mauritius' claim that the area of overlap with respect to the continental shelf beyond 200 nm should be delimited by dividing it in half is predicated on a prior delineation of the outer limits of the continental shelf, a task which, according to the Maldives, is beyond the jurisdiction of the Special Chamber, and is thus inadmissible.

278. For its part, Mauritius argues that each of the Maldives' objections is without merit and should be rejected. Mauritius submits that the Special Chamber has jurisdiction to proceed with the delimitation of the maritime boundary between the Parties, both within and beyond 200 nm, and that its claim to a continental shelf beyond 200 nm is fully admissible. Mauritius maintains that in the circumstances of the present case, the equitable solution required by article 83 of the Convention is satisfied by "an equal apportionment of the area of overlapping entitlements

effectuated by means of an azimuth of 55 degree extending from the eastern end of the 200 M limit.” It adds that most of the Maldives’ arguments are aimed at “challenging Mauritius’ claim to a continental shelf beyond 200 M on the merits, rather than in terms of jurisdiction or admissibility properly speaking.”

279. The Special Chamber will examine the Parties’ arguments regarding the jurisdiction of the Special Chamber and the admissibility of Mauritius’ claim before addressing the delimitation of the continental shelf beyond 200 nm.

#### **A. Jurisdiction of the Special Chamber**

280. The Special Chamber will first consider whether it has jurisdiction regarding the delimitation of the Parties’ continental shelves beyond 200 nm.

281. The Special Chamber recalls that in its Judgment on Preliminary Objections, it dealt with the issue of its jurisdiction and the admissibility of Mauritius’ claim and found that

it has jurisdiction to adjudicate upon the dispute submitted to it by the Parties concerning the delimitation of the maritime boundary between them in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible; *defers*, however, to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.

(Judgment on Preliminary Objections, at p. 115, para. 354(6))

282. However, in the course of the proceedings on the merits the Parties disagreed regarding the scope of the dispute and the Special Chamber’s jurisdiction over the delimitation of the continental shelf beyond 200 nm.

283. While Mauritius argues that the Special Chamber has jurisdiction to proceed to that delimitation, the Maldives contends that the jurisdiction of the Special Chamber does not extend to the delimitation of the continental shelf beyond 200 nm.

*The Maldives' arguments*

284. The Maldives' contention is based on the following two grounds: (i) Mauritius' claim to an outer continental shelf is a new dispute, which did not exist when it instituted proceedings, over which the Special Chamber has no jurisdiction, and (ii) the obligation of the Parties to expeditiously exchange views regarding the settlement of the dispute through negotiations or other peaceful means, pursuant to article 283 of the Convention, has not been complied with.

285. The Maldives submits that Mauritius' claim to an outer continental shelf entitlement is outside the Special Chamber's jurisdiction "because it was not within the scope of the 'dispute' between the Parties" at the time Mauritius filed its Notification.

286. The Maldives submits further that, "[i]n June 2019, when Mauritius filed its application in the present proceedings, no dispute existed as regards Mauritius' alleged entitlement to an OCS [outer continental shelf] in the 'Northern Chagos Archipelago Region'." The Maldives contends that, in finding that a dispute existed between the Parties at the relevant time, the Judgment on Preliminary Objections made no reference whatsoever to overlapping claims in the outer continental shelf and that Mauritius first advanced its outer continental shelf claim against the Maldives in its Memorial on 25 May 2021.

287. According to the Maldives, "this new claim" by Mauritius to an outer continental shelf entitlement was not the subject of a dispute which had crystallized prior to Mauritius initiating the present proceedings and "is for that reason outside the Chamber's jurisdiction."

288. The Maldives states that the existence of a dispute at the time of the commencement of proceedings "is a precondition to the exercise of jurisdiction by this Chamber." It contends that "[t]his is clear from the text of Article 288(1) of UNCLOS which confers 'jurisdiction over any *dispute* concerning the interpretation or application of this Convention' (emphasis added)."



289. The Maldives notes that, in the Judgment on Preliminary Objections, this Chamber recalled that “for it to have jurisdiction *ratione materiae* to entertain a case, ‘a dispute concerning the interpretation or application of the Convention between the Parties must have existed at the time of the filing of the Application’”.

290. The Maldives notes further that, as the Special Chamber confirmed, the existence of a dispute at the time of filing is not a mere technical matter. According to the Maldives, it is settled jurisprudence that a State must not be “deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct”. In its view, the dispute must be of “sufficient clarity that the Parties were aware of the issues in respect of which they disagreed” and it must be shown that the respondent State “was aware, or could not have been unaware, that its views were ‘positively opposed’ by the applicant”.

291. The Maldives states that the Parties agree that the existence of a dispute “when Mauritius filed its Notification and Statement of Claim (‘Notification’) on 18 June 2019” is a precondition to the exercise of jurisdiction but disagree on whether a dispute existed at that time with respect to Mauritius’ claim of entitlement to an outer continental shelf in the Northern Chagos Archipelago Region.

292. The Maldives notes that the Judgment on Preliminary Objections found that the Parties held clearly opposite views “only” in respect of “an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area”. It notes further that “[i]t did not (and could not) refer anywhere to the significant overlap generated by Mauritius’ new OCS [outer continental shelf] claim (amounting to 22,298 km<sup>2</sup>), because Mauritius filed its 2021 Preliminary Information four months after the Judgment.” The Maldives adds that it had no notice of that claim and no opportunity to respond with a clearly opposite view of a non-existent claim or even to exchange views as required by article 283 of the Convention.

293. The Maldives submits that the question of whether a dispute exists is an objective one and, “moreover, to quote the ICJ in *Georgia v. Russia*, it is a ‘matter ...

of substance, not of form’.” It adds that one party’s “assertion that there is a dispute is irrelevant if, in substance, there are not positively opposed claims.”

294. The Maldives asserts that it is essential that the dispute existed at the critical date of the filing of the application and notes that the ICJ made this “authoritative pronouncement” in *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, stating that “[a]lthough statements made or claims advanced in or even subsequently to the Application may be relevant for various purposes – notably in clarifying the scope of the dispute submitted – they cannot create a dispute *de novo*, one that does not already exist.”

295. The Maldives contends that “Mauritius has now attempted to significantly expand that narrow dispute by making an entirely new claim to an OCS” and that “[s]pecifically, on 24 May 2021, just one day before the time limit for filing its Memorial, Mauritius submitted preliminary information to the CLCS ..., claiming for the first time an extensive area of overlap in the OCS claimed by the Maldives in its 2010 CLCS submission.” The Maldives states further that “Mauritius’ contention ... that such a dispute existed at the time it filed its Notification on 18 June 2019 is entirely unconvincing.”

296. The Maldives submits that an applicant State cannot seek to have a multiplicity of matters determined together where only some of those matters satisfy the requirements of a dispute. It adds that the dispute must relate to the issue brought before the Court and that a dispute on a different issue cannot be used as “a multi-purpose jurisdictional hook.” In the Maldives’ view, “[t]his is critical because it is a principle that Mauritius would have the Special Chamber ignore.”

297. According to the Maldives, the fact that it felt unable to negotiate, “given the longstanding sovereignty dispute between the United Kingdom and Mauritius”, did not prevent Mauritius from setting out its claim. It notes that Mauritius could have done so in written correspondence or even by filing a CLCS submission with respect to the “Northern Chagos Archipelago Region” and that the Maldives could then have reacted.

298. The Maldives submits that Mauritius, in its Notification, requested a delimitation of “the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines”, but that Mauritius provided no legal or factual basis for such a delimitation, “given that, at this time, it had never made a claim to such an entitlement.”

299. The Maldives maintains that “Mauritius’ case on jurisdiction rests on a single reference to a ‘potential overlap of the extended continental shelf’” in negotiations with the Maldives in 2010 but, as recognized in the Judgment on Preliminary Objections, this in fact refers to the overlap between the Maldives’ outer continental shelf and Mauritius’ exclusive economic zone.

300. The Maldives affirms that the Judgment on Preliminary Objections made clear that the maritime boundary dispute between the Parties was limited to overlapping claims in the exclusive economic zone and the continental shelf within 200 nm of the Parties’ baselines, and a slight overlap between the Maldives’ claim to an outer continental shelf beyond 200 nm made in its 2010 submission to the CLCS, and Mauritius’ claim to an exclusive economic zone and a continental shelf within 200 nm.

301. The Maldives maintains that the Special Chamber did not find anywhere that a dispute existed in respect of overlapping outer continental shelf claims, “the reason being that such a dispute did not in fact exist”, and that, as a result, “this Chamber does not have jurisdiction in respect of Mauritius’ purported OCS [outer continental shelf] entitlement.”

302. The Maldives further argues that there was no exchange of views between the Parties, pursuant to article 283 of the Convention. According to the Maldives, as “Mauritius first advanced its OCS [outer continental shelf] claim against the Maldives in its Memorial on 25 May 2021”, it “obviously ... had no opportunity to convey its views on that claim pursuant to UNCLOS Article 283.”

303. The Maldives submits that “the requirement regarding exchanges of views under Article 283 has a ‘distinct purpose’ and ‘is not an empty formality, to be dispensed with at the whims of a disputant’; instead, ‘[t]he obligation in this regard must be discharged in good faith, and it is the duty of the Tribunal to examine whether this is being done’.” According to the Maldives, “[t]here is no doubt in the present case that this obligation has not been respected.” The Maldives concludes that “[t]his is an additional reason why the Special Chamber does not have jurisdiction over Mauritius’ new claim to an alleged OCS [outer continental shelf].”

304. The Maldives contends that Mauritius’ significant expansion of the claim to an outer continental shelf for the first time in its Memorial raises the question of procedural fairness. The Maldives points out that it had no notice whatsoever of this new and extensive claim and had never been given an opportunity to respond. According to the Maldives, this is fundamentally inconsistent with “the requirements of UNCLOS as well as the basic tenets of procedural fairness.”

305. The Maldives also contends that it “has been deprived of its fundamental procedural rights to bifurcate proceedings under the ITLOS Rules; it cannot be forced to address the merits before the Special Chamber has decided the prior question of jurisdiction and admissibility.” It adds that the principles of procedural fairness are not mere suggestions and that “[t]hey cannot be trumped by considerations of judicial economy.”

#### *Mauritius’ arguments*

306. For its part, Mauritius affirms that there is nothing in the Judgment on Preliminary Objections that supports the Maldives’ attempts to distinguish between a pre-existing dispute and a “new” dispute between the Parties, “the latter covering only delimitation between the Parties’ extended continental shelves and being *ex hypothesi* outside of the scope of the Special Chamber’s jurisdiction.” It adds that the Maldives’ “narrow and artificial approach” to the Special Chamber’s jurisdiction finds no support in the Judgment on Preliminary Objections.

307. Mauritius asserts that the Special Chamber confirmed its jurisdiction in terms of the dispute as submitted by the Parties and that the dispute submitted by the Parties “plainly encompasses a dispute in relation to the outer continental shelf.” Mauritius states that it is clearly not a “new dispute” which arose subsequent to the institution of the present proceedings and independently of the dispute already dividing the Parties, as the Maldives would have it.

308. Mauritius states further that what was transferred to the Special Chamber is an overall delimitation dispute, “including an element caused by the overlap of the OCSs [outer continental shelves] of the Parties – a problem the Parties have been unable to resolve in the meantime.”

309. Responding to the Maldives’ contention set out in paragraph 300 above, Mauritius argues that the Special Chamber was concerned only with the establishment of the existence of a dispute between the Parties and that in order to establish the existence of such a dispute, “the Chamber relied on statements made by the Parties when the dispute crystallised, *i.e.*, in the period between 2010 and 2011.”

310. Mauritius maintains that “[i]t is apparent that paragraph 332 of the Judgment seeks only to reflect the language of these statements, as they were made at the time.” It argues that such statements “do not, however, shed any light on the exact *scope* of the dispute that is presently before the Special Chamber.”

311. Mauritius argues that, “[w]ere we to stick to the terms alone of [the first] sentence in paragraph 332, we would be forced to conclude that the delimitation could concern only the EEZ because this sentence mentions only an overlap with ‘the claim of Mauritius to an Exclusive Economic Zone in the relevant area’.”

312. Mauritius contends that the way in which the Special Chamber ultimately characterizes the dispute in the present case makes it clear that “Maldives has taken paragraph 332 out of its context”, and seeks to give it a meaning that it does not possess. Mauritius further contends that the Special Chamber in the Judgment on Preliminary Objections “concludes its examination of Maldives’ fourth preliminary

objection, relating to the alleged absence of a dispute between the Parties, by holding in the most general terms in paragraph 335 that ‘in the present case a dispute existed between the Parties’.

313. Mauritius argues that, in even more clear and compelling terms, the Special Chamber found in the operative part of the Judgment that it has “jurisdiction to adjudicate upon the dispute *submitted to it by the Parties concerning the delimitation of the maritime boundary between them* in the Indian Ocean.” It adds that this wording in no way echoes the terms used in paragraph 332, “be they more specific or more restricted.”

314. Mauritius states that the reference to the dispute submitted to it by the Parties is crystal clear: “the Special Chamber does not call into question the fact that the dispute submitted by the Parties’ Special Agreement (and reflecting the Application initially made by Mauritius) covers the delimitation as a whole, including that part which relates to ‘the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines from which its territorial sea is measured,’ as is explicitly mentioned in Mauritius’s Notification of Claim.” Mauritius further states that “[i]t is plain that the dispute submitted to the Special Chamber by the Parties includes an area beyond 200 M.”

315. Mauritius notes that the Special Chamber, in its Judgment on Preliminary Objections, deferred “to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.” In the view of Mauritius, this language offers further confirmation that the Special Chamber concluded that it had jurisdiction over all aspects of the dispute as submitted, “including in respect of areas beyond 200 M”, but that it would defer the question of whether to exercise aspects of that jurisdiction to the merits phase.

316. Mauritius affirms that “there is a cardinal distinction” between the existence of jurisdiction and the exercise of jurisdiction, and that the Special Chamber’s conclusion makes clear that the delimitation of the continental shelf beyond 200 nm is not “a question that necessarily lies outside of the scope of its jurisdiction, as

Maldives argues.” Mauritius asserts that, rather, it is simply an indication that the Special Chamber will, in conformity with well-established case law, “and entirely correctly, examine at the merits stage whether the Parties’ claims to continental shelf rights beyond 200 M are in accordance with Article 76 of UNCLOS.”

317. Mauritius maintains that the Special Chamber has defined its jurisdiction in broad terms by referring to a dispute “between the Parties concerning the delimitation of their maritime boundary”, without suggesting any distinction between delimitation within or beyond 200 nm, and notes that, contrary to the Maldives’ assertions, Mauritius is in no way “re-interpreting” this judgment.

318. Mauritius recalls that, in the meeting of 21 October 2010, following Maldives’ submission to the CLCS of information on the limits of the continental shelf beyond 200 nm, the Parties initially agreed to “hold[] [discussions] for the delimitation of [their] exclusive economic zones” and that “a few weeks later, ... the Parties agreed ‘to discuss a potential overlap of the *extended continental shelf* and to exchange views on *maritime delimitation* between the two ... States’”, and that such discussion was not limited to any potential overlap within 200 nm.

319. Mauritius notes that “Maldives refused to pursue the dialogue which was started in 2010” and further notes that “[t]his problem of the overlap of the OCSs has – still manifestly – not disappeared by magic in the meantime simply because Maldives chose to disregard it, just as it had disregarded the continued existence of the delimitation dispute as a whole.” It adds that “Maldives has had a full and proper opportunity to respond to Mauritius’ extended continental shelf claim”.

320. According to Mauritius, the Maldives was not “deprived of the opportunity to react to the claim made against its conduct ..., because [Maldives] had this opportunity to react since the problem arising from the overlap of the continental shelves was on the negotiating table by the two States back in March 2011” and once again in 2019 when Mauritius invited it to start a second round of negotiations.

321. Refuting the Maldives’ argument in accordance with which “this new claim by Mauritius to an outer continental shelf entitlement was not the subject of a dispute

which had crystallized prior to Mauritius initiating the present proceedings and is for that reason outside the Chamber's jurisdiction", Mauritius notes that it initially submitted a dispute to the arbitration proceedings based on Annex VII to the Convention which covers the maritime delimitation as a whole.

322. Mauritius notes further that its Notification includes "the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines from which the territorial sea is measured." Mauritius states that the delimitation of continental shelves beyond 200 nm "was indeed included, as of the introduction of dispute settlement proceedings which led to the instant case, as being an integral part of the delimitation dispute between the Parties."

323. Mauritius contends that "[a]t no point in time have the Parties been less comprehensive as to the scope of their claims or of the dispute itself", that "[a]t no time have the exchanges referred to any limit of the discussions to areas within 200 M", and that "in its Notification and Statement of Claim initiating these proceedings, Mauritius defined the 'subject matter of the dispute' as 'the delimitation of the Exclusive Economic Zone ... and continental shelf of Mauritius with Maldives in the Indian Ocean'." According to Mauritius, from the outset, "the subject matter of the dispute was thus defined in the most comprehensive terms" as being "an integral part of the delimitation dispute between the Parties."

324. Mauritius argues that "[i]t is therefore entirely artificial for Maldives", at this stage of the dispute, to seek to limit the jurisdiction *ratione materiae* of the Special Chamber "on the grounds that there had been no prior dispute between the Parties on a possible overlap of their respective extended continental shelves, ... beyond 200 M."

325. In response to the Maldives' argument relating to procedural fairness, Mauritius contends that "[t]here is no unfair process whereby Mauritius allegedly insidiously extended the scope of the dispute once the Special Chamber had been seized." According to Mauritius, the question of delimitation of the continental shelf beyond 200 nm was "part and parcel, since 2011 at least, of the overall dispute



between the Parties, and the Chamber has full jurisdiction to rule on this element of Mauritius' claims."

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326. The Special Chamber will now examine the arguments of the Parties laid out in these proceedings. These arguments raise the following questions: (i) whether Mauritius' request for the delimitation of the Parties' continental shelves beyond 200 nm creates a new dispute, as argued by the Maldives; (ii) whether the jurisdiction of the Special Chamber, as established in operative paragraph 354(6) of the Judgment on Preliminary Objections, covers Mauritius' request for the delimitation of the Parties' continental shelves beyond 200 nm in the "Northern Chagos Archipelago Region"; and (iii) whether the obligation to proceed expeditiously to an exchange of views pursuant to article 283 of the Convention was complied with.

327. The Special Chamber will first address questions (i) and (ii) together, as the question of the scope of the dispute is closely related to that of the scope of its jurisdiction.

328. The Special Chamber recalls that the dispute was initially submitted to the arbitral tribunal pursuant to Annex VII to the Convention and later transferred to the Special Chamber by Special Agreement of 24 September 2019.

329. In its Notification instituting arbitral proceedings, Mauritius stated that "[t]he dispute concerns the delimitation of the Exclusive Economic Zone ("EEZ") and continental shelf of Mauritius with Maldives in the Indian Ocean." In that Notification, Mauritius requested "the Tribunal to delimit, in accordance with the principles and rules set forth in UNCLOS, the maritime boundary between Mauritius and Maldives in the Indian Ocean, in the EEZ and continental shelf, including the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines from which its territorial sea is measured."

330. In the aforementioned Special Agreement, the Parties agreed “to transfer the arbitral proceedings instituted by Mauritius in the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean to a special chamber of the Tribunal”.

331. The Special Chamber observes that, both in Mauritius’ Notification and the Special Agreement, the subject matter of the dispute is defined in comprehensive terms as a “dispute concerning the delimitation of the maritime boundary between them [the Parties] in the Indian Ocean”. In the Special Chamber’s view, there is nothing in these documents that suggests, expressly or implicitly, that delimitation of the maritime boundary between the Parties should exclude the continental shelf beyond 200 nm.

332. The Special Chamber recalls that the dispute and the arbitral proceedings were transferred to the Special Chamber by agreement of the Parties and that the subject matter of the transferred dispute is not limited to only certain overlapping maritime areas claimed by the Parties, to the exclusion of other maritime areas or portions of them.

333. The Special Chamber is therefore of the view that the subject matter of the dispute that existed at the critical date of the filing of the Notification covers, in broad terms, the delimitation of the exclusive economic zones and of the continental shelves of the Parties.

334. Furthermore, it is to be recalled that in its Judgment on Preliminary Objections, the Special Chamber dealt with the issue of its jurisdiction and found that it “has jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible” (operative paragraph 354(6)).

335. Paragraph 332 of the Judgment on Preliminary Objections focuses on the dispute as it unfolded in the exchanges between the Parties in 2010 and 2011, which refers only to the dispute between them in regard to their exclusive economic zones and the overlap between the Maldives’ claimed continental shelf beyond 200 nm and

Mauritius' exclusive economic zone. However, paragraph 335 of that Judgment, which concludes that "a dispute existed between the Parties concerning the delimitation of their maritime boundary at the time of the filing of the Notification", addresses in broader terms the issue of the scope of the dispute.

336. The Special Chamber does not agree with the Maldives' restrictive view of the scope of its jurisdiction according to which the Judgment on Preliminary Objections made clear that the maritime boundary dispute between the Parties was limited to overlapping claims in the exclusive economic zone and the continental shelf within 200 nm, and a slight overlap between the Maldives' claim to a continental shelf beyond 200 nm and Mauritius' claim to an exclusive economic zone and continental shelf within 200 nm.

337. A close examination of operative paragraph 354(6) of the Judgment on Preliminary Objections indicates that, by deferring "questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention", to the proceedings on the merits, the Special Chamber meant that it had jurisdiction over such matters, i.e., matters regarding the continental shelf beyond 200 nm. This understanding is reinforced in paragraph 351 of the Judgment where it stated that "it has jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean". Logically, the Special Chamber can only defer the consideration of the exercise of its jurisdiction if it has in the first place assured itself that it has jurisdiction, as it did in paragraph 351 of the Judgment.

338. The Special Chamber is of the view that its jurisdiction necessarily covers the continental shelf in its entirety, whether that be within or beyond 200 nm. This view is supported by the well-established jurisprudence that "there is in law only a single 'continental shelf' rather than an inner continental shelf and a separate extended or outer continental shelf" (*Barbados v. Trinidad and Tobago*, at pp. 208-209, para. 213).

339. In this regard, it is to be recalled that, in *Bangladesh/Myanmar*, the Tribunal stated that "[a]rticle 76 of the Convention embodies the concept of a single

continental shelf”, adding that “[i]n accordance with article 77, paragraphs 1 and 2, of the Convention, the coastal State exercises exclusive sovereign rights over the continental shelf in its entirety without any distinction being made between the shelf within 200 nm and the shelf beyond that limit” (*Bangladesh/Myanmar*, at p. 96, para. 361). On this basis, the Tribunal in that case found it had jurisdiction to delimit the continental shelf in its entirety.

340. The Special Chamber therefore considers that the portion of the continental shelf beyond 200 nm should not be seen and treated as a separate and different maritime area of the coastal State, entailing two separate disputes.

341. The Special Chamber is of the view that in the absence of a new dispute, the requirements of article 283 of the Convention regarding the request of Mauritius for the delimitation of the continental shelf beyond 200 nm are therefore irrelevant.

342. With respect to the Maldives’ argument relating to procedural fairness, the Special Chamber recalls that the question of jurisdiction and admissibility, contrary to what the Maldives states, was pleaded and decided at the preliminary stage of the proceedings. At the present stage, it considers the extent to which it may exercise the jurisdiction. The Special Chamber notes in this regard that there is a fundamental difference between the finding of jurisdiction and the deferral of its exercise to a later stage of the proceedings. By deferring the exercise of its jurisdiction in the present case, the Special Chamber acted in accordance with the Rules and well-established international jurisprudence.

343. In light of the foregoing, the Special Chamber finds that Mauritius’ claim over the continental shelf beyond 200 nm does not constitute “a new dispute”, nor does it “expand [the] narrow dispute by making an entirely new claim to an OCS [outer continental shelf]” which “did not exist when Mauritius instituted proceedings”, contrary to the Maldives’ contention. The Special Chamber concludes that its jurisdiction to delimit the continental shelf between the Parties includes not only the continental shelf within 200 nm but also any portion of the continental shelf beyond 200 nm, including the “Northern Chagos Archipelago Region”.

344. The Special Chamber notes in this regard that whether and to what extent it should exercise such jurisdiction in the present case depends on whether the Parties have demonstrated that they have fulfilled the requirements of article 76 of the Convention. The Special Chamber will address this issue in paragraphs 384 to 456 below.

## **B. Admissibility of Mauritius' claim**

345. The Special Chamber will now turn to the second objection raised by the Maldives, i.e., that "Mauritius' claim to an OCS [outer continental shelf] entitlement is inadmissible because it has failed to make a timely CLCS submission concerning the 'Northern Chagos Archipelago Region'". For its part, Mauritius submits that the Maldives' objection is without merit.

### *The Maldives' arguments*

346. The Maldives' objection is based on two grounds. First, it argues that "Mauritius' claim to an [outer continental shelf] entitlement is inadmissible because it had not filed a full submission with the CLCS prior to its commencement of proceedings." Second, the Maldives contends that "Mauritius did not file its Preliminary Information regarding the 'Northern Chagos Archipelago Region' within the mandatory time limits which expired in 2009, meaning that it was not entitled to file or rely on a submission in respect of this region".

347. In its Counter-Memorial, which was filed before Mauritius' submission to the CLCS, the Maldives argued, as the first ground for this objection, that "Mauritius' claim in respect of its alleged [outer continental shelf] entitlement is clearly inadmissible ... because ... Mauritius has submitted only preliminary information with the CLCS, and has not filed a full submission (contrary to its obligations pursuant to UNCLOS, Article 76(8) and Article 4 of Annex II)." The Maldives, referring to the 2016 judgment of the ICJ in the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast*, contended that the jurisprudence of international courts and tribunals had established that a delimitation with respect to an "alleged OCS [outer continental

shelf] entitlement cannot proceed in circumstances where the State concerned has failed to file a full submission to the CLCS” in accordance with the relevant provisions of the Convention. It added that it is not sufficient for a State to have filed preliminary information.

348. After Mauritius had filed a full submission with the CLCS, the Maldives, in its Rejoinder, modified its argument to assert that Mauritius’ claim is inadmissible because it had not filed a full submission with the CLCS prior to its commencement of the present proceedings. In the view of the Maldives, Mauritius “was not entitled to and did not ‘cure’ this inadmissibility by filing a full submission some three years later”.

349. Referring to international jurisprudence, the Maldives states that it is firmly settled in international law that the critical date for determining the admissibility of an application is the date on which it is filed. According to the Maldives, this is the only relevant date for determining the admissibility of an application and subsequent developments cannot be taken into consideration. The Maldives asserts that, consequently, “either Mauritius’ outer continental shelf claim was admissible when it instituted proceedings against the Maldives on 18 June 2019, or it is inadmissible today.”

350. The Maldives contends that, by virtue of the Rules and the principles of procedural fairness which apply to these proceedings, the 2022 submission on which Mauritius now seeks to rely is inadmissible as evidence and therefore cannot remedy the inadmissibility of Mauritius’ outer continental shelf claim.

351. As the second ground for this objection, the Maldives argues that Mauritius has failed to comply with the mandatory time-limits for outer continental shelf claims, i.e., 13 May 2009, meaning both that its preliminary information was filed contrary to its obligations under the Convention and that it was no longer entitled to make a full submission to the CLCS.

352. The Maldives submits that Mauritius’ obvious failure to file timely preliminary information in May 2009 regarding the Northern Chagos Archipelago Region means

that its right to claim such an entitlement has lapsed and that the Special Chamber should thus dismiss its claim to such an entitlement as inadmissible.

353. With respect to the preliminary information submitted by Mauritius to the CLCS on 6 May 2009, the Maldives contends that it was exclusively concerned with the area to the south of the Chagos Archipelago. According to the Maldives, Mauritius made no indication whatsoever that it would later file preliminary information or a full submission relating to any different area in the vicinity of the Chagos Archipelago. It adds that the indicative map contained in the 2009 preliminary information did not even depict the northern land features in the archipelago, let alone the continental shelf claim that Mauritius has since lodged on the basis of these features.

354. As regards the submission of Mauritius to the CLCS with respect to the Southern Chagos Archipelago Region of 26 May 2019, the Maldives states that “[t]hat Submission merely contained a sentence referring to a *potential* claim with respect to the ‘Northern Chagos Archipelago Region’, framed in vague terms and with no timeframe given for when such a hypothetical claim of unspecified scope may be raised.”

355. As concerns the “Amended Preliminary Information” in respect of the Northern Chagos Archipelago Region, submitted by Mauritius to the CLCS on 24 May 2021, the Maldives argues that, contrary to its title, the communication does not amend Mauritius’ 2009 preliminary information but raises an entirely new outer continental shelf claim.

356. The Maldives contends that Mauritius has failed to point out any basis in the Convention, or rules or decisions adopted thereunder, allowing for a right of amendment of preliminary information.

357. In response to Mauritius’ argument regarding the order of appearance of its submissions on the CLCS website, the Maldives states that the mere placement of these submissions on the website is clearly not an endorsement of Mauritius’ position.

358. As to Mauritius' argument concerning State practice regarding submissions to the CLCS, the Maldives asserts that "the State practice cited by Mauritius – rather than supporting its elastic concept of treaty interpretation – does the exact opposite." In the Maldives' view, the State practice demonstrates that, having filed timely preliminary information submissions, States do not suddenly invent entirely new claims that were never previously mentioned. It adds that, critically, none of the State practice invoked by Mauritius affects, or is even alleged to affect, the admissibility of such submissions in judicial proceedings as the basis of a request for delimitation beyond 200 nm.

359. As far as Mauritius' argument regarding the treatment of a revised submission in *Ghana/Côte d'Ivoire* is concerned, the Maldives underlines that, in that case, it was the respondent, not the applicant, which had filed a revised CLCS submission during the proceedings concerning the same area as its earlier, timely submission. According to the Maldives, the Special Chamber in that case found that it could take into account the revised submission when delimiting the course of the boundary, a question it treated separately from, and subsequent to, its assessment of whether the dispute had been admissible on the critical date of seisin.

360. The Maldives submits that Mauritius' late filings of the submission with the CLCS have had "a serious and detrimental impact on the fairness of these proceedings" by inhibiting the Maldives' ability to respond to Mauritius' "allegations". The Maldives further submits that Mauritius' failure to properly explain the basis for its claim to the continental shelf beyond 200 nm until the final stage of the pleadings is a breach of the "ITLOS Rules – notably article 62 – and principles of procedural fairness". The Maldives contends that it has been prejudiced in this regard and states that "we hope that the Chamber will attach consequences to the breach of these rules and principles; otherwise, they are not rules and principles at all."

#### *Mauritius' arguments*

361. Mauritius, for its part, contends that most of the arguments advanced by the Maldives in support of its objections to admissibility are aimed at challenging



Mauritius' claim to a continental shelf beyond 200 nm on the merits, rather than in terms of admissibility properly speaking. According to Mauritius, "[t]he only argument relating to admissibility as such is Mauritius' alleged failure 'to comply with the mandatory time limits for [outer continental shelf] claims'", but "[that] argument is without merit."

362. Mauritius states that "[t]he Amended Preliminary Information submitted by Mauritius in May 2021 is ... properly identified and to be treated as the completion of the preliminary information submitted in 2009 on the Chagos Archipelago Region." Mauritius maintains that, "[a]s such, it plainly falls within the time limit set out in the decision contained in document SPLOS/183 and it is fully admissible for the purposes of the present proceedings."

363. Mauritius argues that there is a clear and direct continuity between the preliminary information communicated by it in 2009, on the one hand, and the amendments made to it in 2021 as well as the final submission filed in April 2022, on the other.

364. Mauritius recognizes that it is true that the preliminary information submitted by it in 2009 focuses on "the outer edge of the continental margin in the relevant land territory in the Chagos Archipelago Region (Egmont and Diego Garcia Islands)" and that the map included therein illustrates the indicative extended continental shelf in the southern part of that region only. However, Mauritius contends that it clearly expressed at the time its intention "to make a submission for an extended continental shelf in respect of the Chagos Archipelago Region".

365. Mauritius argues that this demonstrates a clear expression of its will to preserve its rights for the future and the possibility to file a submission for an extended continental shelf covering the entire region of the Chagos Archipelago. It adds that the purpose of filing this document was evidently to simply stop the clock in order to preserve its future rights while complying with a new deadline established by the States Parties to the Convention, but without limiting these rights in any fashion.

366. Mauritius contends that, at that time, it was faced with evident difficulties resulting from the very situation of the Chagos Archipelago and the challenges regarding its legal status, which were far from being resolved. In its view, “it would be rather extraordinary ... that on account of manifest difficulties created by the wrongful occupation of a part of its territory by a former colonial power, ... the Republic of Mauritius should now be deprived of the rights that the International Court of Justice defined as inherent rights that every State possesses, *ipso facto* and *ab initio*, over its continental shelf.”

367. Mauritius recalls that in its submission to the CLCS concerning the Southern Chagos Archipelago Region of 26 March 2019, it stated:

The Republic of Mauritius also intends to make another partial submission concerning the continental shelf in the Northern Chagos Archipelago Region in due course. However, since there is a likely overlap with the claim for an extended continental shelf submitted by the Republic of the Maldives ... and the representations made by the Republic of Mauritius ..., the Republic of Mauritius is envisaging bilateral talks with the Republic of Maldives with a view to reaching an agreement both in respect of the maritime delimitation and the extended continental shelf.

Mauritius states that, as it became clear that there would be no such negotiations, it proceeded to prepare a submission concerning the Northern Chagos Archipelago Region.

368. Mauritius asserts that it is not a coincidence that the claim for an extended continental shelf concerning the Southern Chagos Archipelago Region was filed with the CLCS in 2019, “only several weeks after the ICJ’s advisory opinion had confirmed that the archipelago was an integral part of Mauritian territory”, nor is it by chance that the communications concerning the northern region of that same area were transmitted shortly afterwards.

369. Mauritius contends that the extent of its entitlement was described in the Amended Preliminary Information that it submitted to the CLCS on 24 May 2021, “a clarification of the original 6 May 2009 Preliminary Information and not a new one.” According to Mauritius, its Amended Preliminary Information appears on the CLCS

website alongside the earlier submission, which makes clear that the 2021 submission is to be treated as a clarification of the earlier 2009 submission.

370. Mauritius states that the central issue here is that of the interpretation of the rules of the Convention and related instruments concerning the method for States Parties to submit their claims to extended continental shelves. It adds that what is to be noted in this regard is the flexibility that both the States Parties and the CLCS have shown.

371. In this regard, Mauritius refers to Annex I to the Rules of Procedure of the CLCS concerning “Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes”. It highlights paragraph 3 of Annex I, which provides:

A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later, notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention.

372. Mauritius contends that there are a number of States that have relied on the aforementioned provision in order to make submissions, many years after their initial communication to the CLCS, concerning an extended continental shelf in regions other than those concerned by their initial communication. In the view of Mauritius, the amended preliminary information and the submission concerning an extended continental shelf in the Northern Chagos Archipelago Region, presented by it in 2021 and 2022, are fully in line with this practice.

373. According to Mauritius, what this practice shows is a deliberate willingness to grant more flexibility to States that are dealing with unresolved land or maritime disputes. Mauritius asserts that this flexibility is also found in the way in which international courts deal with the amendments and modifications made by States to communications transmitted to the CLCS, even when those modifications arrive “mid-proceedings.”

374. Mauritius argues that *Ghana/Côte d'Ivoire* gives a particularly striking illustration of this. It states that, in this case, Côte d'Ivoire had amended its initial submission to the CLCS after Ghana's Memorial was filed and shortly before it filed its own Counter-Memorial. Mauritius notes that Ghana claimed that this revised submission should be excluded from the proceedings under "normal principles of international litigation". It adds that the Special Chamber in that case, first of all, observed that "it is for each State to decide within the framework set out under article 76(8) of the Convention, including the rules of the CLCS, when and how to file its submissions to the CLCS." According to Mauritius, "[f]ar from dismissing the revised submission by Côte d'Ivoire for the procedural reasons invoked by Ghana, the judges concluded that Côte d'Ivoire could rely on the revised submission in the proceedings before the Special Chamber."

375. In response to the Maldives' argument relating to procedural fairness, Mauritius contends that "the proceedings themselves show that this criticism by the opposing Party is without merit." According to Mauritius, the Maldives had ample opportunity to question the claim of Mauritius to an extended continental shelf in its written pleadings and would have the possibility to express its views twice during the course of the oral proceedings. Mauritius adds that "[s]o it is difficult to see in these circumstances how the procedural rights of Maldives would be ignored".

\* \* \*

376. The Special Chamber will now address the first ground submitted by the Maldives, i.e., that Mauritius' claim of entitlement to a continental shelf beyond 200 nm is inadmissible because it had not filed a full submission with the CLCS prior to its commencement of the proceedings.

377. The Special Chamber notes that this argument presupposes that the filing of a submission with the CLCS prior to the institution of the proceedings is a procedural requirement for the delimitation of the continental shelf beyond 200 nm. The Special Chamber does not consider that there is any rule requiring that a submission be made prior to the institution of delimitation proceedings. In any event, Mauritius has

filed a submission with the CLCS with respect to the Northern Chagos Archipelago Region.

378. In this regard, reference can be made to *Bangladesh/Myanmar* and *Bangladesh v. India*. In both cases, Bangladesh filed its submission with the CLCS with respect to the area concerned after the institution of the proceedings. This did not prevent the Tribunal or the arbitral tribunal, respectively, from proceeding to delimit the continental shelf beyond 200 nm.

379. The Special Chamber now turns to the second ground argued by the Maldives, i.e., that Mauritius has failed to comply with the mandatory time-limits for outer continental shelf claims, meaning both that its preliminary information was filed contrary to its obligations under the Convention and that it was no longer entitled to make a full submission to the CLCS.

380. As the Special Chamber in *Ghana/Côte d'Ivoire* stated, “it is for each State to decide – within the framework set out under article 76, paragraph 8, of the Convention (including the Rules of the CLCS) – when and how to file its submissions to the CLCS” (*Ghana/Côte d'Ivoire*, at p. 141, para. 516). For the purposes of the present proceedings, the Special Chamber does not consider it necessary to decide on the question whether the 2022 submission of Mauritius was filed in accordance with the “framework” set out under the Convention, including the time-limit. As far as the Special Chamber is concerned, there is no evidence presented by the Parties that indicates either that Mauritius’ submission has been treated differently from other submissions in the administrative process of the CLCS or that the CLCS would decline its consideration on grounds of timeliness.

381. The Special Chamber recalls in this regard that, at the hearing, the Maldives stated that “both Parties could simply write to the CLCS expressing their consent for each respective submission to be considered without impediment.” In the Special Chamber’s view, this statement was premised upon the expectation that the CLCS would consider the Parties’ submissions following their consent.

382. Regarding the question of procedural fairness raised by the Maldives, the Special Chamber considers that the way in which Mauritius has introduced relevant facts in support of its claim to the continental shelf beyond 200 nm poses a challenge to the orderly management of the proceedings and to ensuring the principle of the equality of the Parties, a principle to which the Special Chamber attaches utmost importance. The Special Chamber has endeavoured to ensure that neither Party would enjoy any procedural advantage over the other Party and is satisfied that the equality of the Parties has been sustained in the present proceedings.

383. Accordingly, the Special Chamber rejects the objection of the Maldives to the admissibility of Mauritius' claim on the grounds that its submission to the CLCS was not filed in a timely manner.

### **C. Question of entitlement**

384. Having decided that the dispute regarding the delimitation of the continental shelf beyond 200 nm is within its jurisdiction, and having rejected the second objection of the Maldives, the Special Chamber will now turn to its third objection, that Mauritius' "alleged" entitlement to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region is manifestly unfounded.

385. While the Maldives raised this objection in terms of admissibility, the Special Chamber considers that the question it should address concerns whether the Parties have entitlements to the continental shelf beyond 200 nm. The Special Chamber notes in this regard that the Parties have presented extensive arguments regarding this question, in particular with respect to Mauritius' entitlement to the continental shelf beyond 200 nm. It will examine those arguments in order to assess the entitlements of the Parties to the continental shelf beyond 200 nm. The Special Chamber will consider whether it may exercise its jurisdiction to determine such entitlements in the circumstances of the present case.

### *Mauritius' arguments*

386. According to Mauritius, its entitlement to a continental shelf beyond 200 nm is “clearly established” and there is “no significant uncertainty” in this regard. Mauritius contends that its entitlement to a continental shelf beyond 200 nm satisfies the requirement set out in article 76, paragraph 1, of the Convention as well as the requirement of paragraph 3 of the same article that the continental margin comprise the submerged prolongation of the land mass of the coastal State.

387. For Mauritius, “[t]he natural prolongation of Mauritius’ continental shelf is based on an extension of the submerged prolongation of the landmass of the Mauritian islands of Peros Banhos and Salomon Islands, and of Blenheim Reef.” It submits that those features, as well as the entirety of the Chagos Archipelago, are “correctly to be treated as the surface expressions of the emerged parts of the Chagos Ridge, which is itself an integral part of the much larger Chagos-Laccadive Ridge.” Mauritius further submits that the Chagos Bank, Laccadive Plateau and Maldivé Ridge are all connected, “forming a single topographical and geomorphological continuity”, noting that to the south and east of the Chagos Archipelago there is a linear depression, the Chagos Trough, which runs alongside the Chagos-Laccadive Ridge.

388. Mauritius contends that, in light of the geological and geomorphological conditions, namely, that the Chagos-Laccadive Ridge “is a single tectonic feature” upon which both Mauritius (the Chagos Archipelago) and the Maldives are situated, there is only one outer continental shelf “to which the Parties have an equal entitlement in law.” It adds that “Mauritius and Maldives both proceed on the basis that the Chagos Trough does not represent an insurmountable obstacle and that it is possible to establish natural prolongation from the territory of Mauritius across the Chagos Trough south of the equator.”

389. According to Mauritius, the foot of the continental slope is “both a measure of the continuity of the continental margin, and the basis for determining the extent (outer edge) of that margin within the meaning of the Convention.” In its view, it follows that points for the foot of the continental slope should not be determined in

isolation; rather, they are to be established within a base of slope region. Mauritius states that it has “defined the base of the slope to be the area where the slope merges with the deep-ocean floor of the Central Indian Basin, in accordance with ... the CLCS Scientific and Technical Guidelines.”

390. Mauritius contends that it has delineated its extended continental shelf entitlement on the basis of the Hedberg formula and by using a combination of one critical foot of slope point and straight lines less than 60 nm in length, up to the 350 nm limit prescribed by article 76, paragraph 5, of the Convention.

391. Mauritius submits that both Mauritius and the Maldives maintain the same critical foot of slope point and that “[t]here is thus no dispute that, in accordance with article 76(4)(b), the foot of slope point has been determined at the point of maximum change in the gradient at the base of the continental slope.” Mauritius adds that “Maldives does not dispute that Mauritius correctly identifies the outer limits of the continental margin, as calculated from the critical foot of slope point, in accordance with article 76(4)(a)(ii).”

392. The position of Mauritius is that it has a natural prolongation, extending from its landmass, through three routes to the critical foot of slope point to the north of the Chagos Archipelago.

393. The first route to the critical foot of slope point set out by Mauritius is described in the Memorial as follows: “[T]he natural prolongation of the continental shelf in the Northern Chagos Archipelago Region along the CLR [Chagos-Laccadive Ridge] extends northwards from the islands of Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef.” Mauritius submits that the only objection the Maldives has raised with respect to this route “concerns the fact that the natural prolongation crosses within 200 miles of its baselines.” It adds that the objection of the Maldives is legal in nature, not technical, and that the Maldives cites no authorities that support its contention that Mauritius cannot establish its natural prolongation in this manner. Mauritius maintains that, “[i]n reaching their respective critical FOS [foot of slope] points, both Mauritius and Maldives have made use of bathymetric profiles which traverse the undisputed EEZ and continental shelf within 200M of another State”.



394. The second route to the critical foot of slope point set out by Mauritius is described in the Reply, wherein Mauritius submits that, “although part of the Chagos Trough is located in Mauritius’ EEZ, its path is interrupted by the Gardiner Seamounts, a feature that enables Mauritius to establish the natural prolongation of its landmass.” With respect to this route, Mauritius’ position is that it has a natural prolongation from the south-east of the Chagos Ridge to the north along the Gardiner Seamounts, which merges with the overall elevated region of the Chagos-Laccadive Ridge. In this regard, Mauritius submits that the critical foot of slope point can also be located from further south. It refers to a “composite of single beam bathymetric profiles” which “starts south-east of the Chagos Ridge along the Gardiner Seamounts and runs north over an overall elevated region, then eastward, and continues northward parallel to the CLR [Chagos-Laccadive Ridge] to the critical foot of slope point FOS-VIT31B.”

395. Mauritius contends that it has demonstrated that the elevated region east of the Chagos Trough is an integral part of the Chagos Ridge and that this establishes a natural prolongation through the Gardiner Seamounts in the south-east. For Mauritius, the presence of such elevated area “refutes Maldives’ assertion that the Gardiner Seamounts and the Chagos Trough region lie immediately next to the deep-ocean floor.” It adds that the Maldives’ CLCS submission supports Mauritius’ reliance on the overall elevated region to the east of the Chagos Trough to reach the critical foot of slope point via the Gardiner Seamounts and that the Maldives’ CLCS submission “refers to the overall elevated region to the east of the Chagos Trough as a ‘lobe feature, which is clearly distinguishable from the adjacent Central Indian Basin deep ocean floor.’”

396. According to Mauritius, the base of slope region encompasses a continuous structure along both the landmasses of Mauritius in the Chagos Archipelago and the Maldives, which coincides with the zone where the eastern extension of the Chagos-Laccadive Ridge merges with the more even seafloor of the Central Indian Ocean Basin and where the gradient values conform to those of a continental slope. Mauritius submits that the foot of slope points, including the critical point FOS-

VIT31B, “are established in this base of slope region, outside Maldives’ EEZ, along the continuous eastern flank of the Chagos and Maldivian Ridges.”

397. Mauritius contends that there is a single physical shelf in the area, a portion of which is claimed by both Parties, such that the location of the foot of slope point VIT31B is “as much a natural prolongation of the landmass of Mauritius as it is of the landmass of Maldives.” For Mauritius, “there is morphological continuity running from Mauritius’ landmass all the way to the foot of slope point.”

398. The third route to the critical foot of slope point set out by Mauritius is described in its oral submissions, wherein Mauritius submits that it is also able to reach the same critical foot of slope point via an “elevated saddle” to the north of the Chagos Archipelago. According to Mauritius, because the Chagos Trough is also interrupted in the north with an integral protuberance similar to the Gardiner Seamounts, it can equally establish its natural prolongation “all along the overall elevated regions to the critical FOS [foot of slope] point, at the point of maximum change in gradient and within the base of slope region.” Mauritius adds that, like the Gardiner Seamounts, this saddle also merges with the overall elevated region of the Chagos-Laccadive Ridge. It also argues that both Parties recognize the existence of saddle-like features which interrupt the Chagos Trough.

399. As to the evidence required by the CLCS to establish entitlement, Mauritius submits that the evidence, in the form of measured bathymetric data, satisfies the standard that the Maldives itself accepts is sufficient to establish the existence of an entitlement through natural prolongation. Mauritius further submits that “Maldives expressly accepts that measured bathymetric data, whether single-beam or multi-beam echosounder data, is both superior to satellite-derived data and sufficient in itself to satisfy the requirements of the CLCS Guidelines”. It argues that gaps in bathymetric data, identified as such in both Parties’ submissions to the CLCS, which are not located within the base of slope region, do not render such data inadequate for the purpose of establishing natural prolongation. Mauritius adds that “both Parties have relied, to some extent, on satellite-derived bathymetry.”

400. The first question posed by the Special Chamber to the Parties read, in part: “Taking into account article 76, paragraph 8, and article 8 of Annex II to the Convention, what would be the consequence if the CLCS takes a different position on the entitlements of the Parties in its recommendations?” (see paragraph 57 above). The response of Mauritius was that it was “extremely unlikely” that the CLCS recommendations would differ from the judgment, particularly in light of the fact that, “while Maldives disputes whether natural prolongation enables Mauritius to use its foot of slope point, Maldives does not dispute the location of the outer limits of the Mauritian OCS [outer continental shelf] should that foot of slope point be found to be proper.”

401. Mauritius further contends that, in the unlikely event the CLCS were to differ in its recommendations, the Parties may, under article 8 of Annex II to the Convention, make revised or new submissions to the Commission, including ones that formally inform it of the judgment, and of the Parties’ obligations under article 296 of the Convention to comply with it. Mauritius adds that “the judgment of the Special Chamber would be binding, and would preclude the Parties from accepting recommendations from the CLCS that conflicted with it.”

402. Regarding the question of scientific and technical expertise, Mauritius maintains that “[t]he Special Chamber’s lack of specialised expertise, in comparison with the CLCS, need not be a barrier to its resolution of the Parties’ dispute beyond 200 M.” It adds that, if the Special Chamber deems necessary, it can consider the views of technical experts retained by the Parties or retain technical experts of its own to guide its evaluation of the Parties’ respective claims.

403. In response to the letter of the Registrar dated 16 August 2022 (see paragraph 45 above) requesting the Parties’ views on the necessity of arranging for an expert opinion, Mauritius states that it “welcomes the proposal that the Special Chamber might appoint one or more experts to prepare an expert opinion on scientific and technical matters that bear on this issue [Mauritius’ entitlement to an outer continental shelf].” Mauritius asserts that both Parties have put before the Special Chamber evidence of a scientific and technical nature upon which an expert opinion could properly be sought. According to Mauritius, “it is difficult to understand

on what basis Maldives asserts that Mauritius has allegedly ‘not presented any relevant evidence’.”

404. Mauritius submits that, “[n]or is there any merit to Maldives’ contention that arranging an independent expert opinion ‘would undermine the impartiality of these proceedings’ and somehow would ‘be a substitute for Mauritius’ burden of proof’.” It adds that, plainly, each Party bears the burden of proving its claim within and beyond 200 nm. In Mauritius’ view, “obtaining an expert opinion at this stage of the proceedings would in no conceivable way be ‘inconsistent with principles of procedural fairness’.” It argues that the Maldives would be entitled to comment on any expert opinion arranged by the Special Chamber.

405. According to Mauritius, “Maldives’ assertion that an expert opinion would ‘encroach on the role of [the] CLCS’ is unfounded. It is the established practice of international courts and tribunals ... to consider the scientific and technical evidence advanced by States for the purposes of delimiting beyond 200 M.”

#### *The Maldives’ arguments*

406. The Maldives, for its part, does not agree that Mauritius is entitled to an outer continental shelf that overlaps with its own. The Maldives contends that “Mauritius’ alleged entitlement is manifestly unfounded under UNCLOS Article 76 because it has clearly failed to establish the natural prolongation of its submerged land territory to the sole critical FOS [foot of slope point] on which it relies”. It adds that Mauritius has presented inconsistent grounds for its outer continental shelf claim and has failed to provide even elementary technical evidence in support.

407. For the Maldives, even if Mauritius’ factual assertions on the morphology of the Chagos-Laccadive Ridge were to be accepted, it is manifest that it has no entitlement because the single foot of slope point on which Mauritius bases its entire claim, FOS-VIT31B, is obviously not the natural prolongation of its submerged land. The Maldives contends that Mauritius has no claim whatsoever of appurtenance to point FOS-VIT31B and the Special Chamber thus cannot be satisfied that Mauritius’ entitlement to an outer continental shelf exists.

408. According to the Maldives, the Chagos Trough creates a clear break in the submerged prolongation of the Chagos Archipelago landmass. The Maldives submits that the “Parties agree that the Chagos Archipelago sits atop the Chagos-Laccadive Ridge” and that “natural prolongation could only be established if there was a way around the Chagos Trough without encroaching on the Maldives’ uncontested 200 nm limit.” In response to the argument of Mauritius that both Parties have proceeded on the basis that the Chagos Trough does not represent an insurmountable obstacle, the Maldives asserts that the fact that the Maldives has referred to two bathymetric profiles which cross the Chagos Trough does not mean that it accepts that there is a submerged prolongation across the trough.

409. The Maldives notes that Mauritius, in its Memorial, claimed an entitlement to an outer continental shelf in the Northern Chagos Archipelago Region and submits that Mauritius “left no doubt that it claimed an OCS [outer continental shelf] entitlement based solely on the CLR [Chagos-Laccadive Ridge] and that this feature was bounded to the east by the Chagos Trough.”

410. In the view of the Maldives, it is not possible to establish natural prolongation across the Chagos Trough, which passes through the entire exclusive economic zone of Mauritius and the southern portion of the Maldives’ exclusive economic zone.

411. Regarding the first route to the critical foot of slope point, as set out by Mauritius in its Memorial, the Maldives submits that Mauritius has no entitlement because the single foot of slope point on which Mauritius bases its entire claim (FOS-VIT31B) is “obviously not the natural prolongation of *its* submerged land territory across *its* seabed through the shelf, slope and rise as required by UNCLOS Article 76.” The Maldives contends that article 76 of the Convention provides that a coastal State must establish a submerged natural prolongation from its land territory across its seabed through the shelf, slope and rise to the outer edge of its continental margin. It argues that Mauritius cannot validly claim an outer continental shelf entitlement “based on the natural prolongation of *another State’s* undisputed submerged land territory.” The Maldives considers that the only path by which

Mauritius can show a prolongation from the landmass of the Chagos Archipelago to point FOS-VIT31B “passes well within the undisputed continental shelf of the Maldives within 200 M” and that “the critical foot of slope point is appurtenant only to the Maldives’ submerged land territory, and not that of Mauritius.”

412. As to the argument of Mauritius that both Parties use bathymetric profiles that pass within 200 nm of other States’ coasts, the Maldives responds that it has not used any of the bathymetric profiles to which Mauritius refers to construct a “path” of submerged prolongation. Instead, it has used them “only to identify the point of maximum change of gradient within a base of slope region already identified at the outer edge of a submerged prolongation.”

413. Regarding the second route to the critical foot of slope point set out by Mauritius in its Reply, the Maldives submits that Mauritius has abandoned its prior position and advanced a contradictory approach to natural prolongation based on a base of slope to the east of the Chagos Trough that is “clearly inconsistent with Article 76 and the CLCS Guidelines.” The Maldives adds that this position is entirely inconsistent with Mauritius’ position in its 2019 CLCS submission, its Memorial, its 2021 preliminary information and even its 2022 submission. It contends that the Gardiner Seamounts are not even mentioned in Mauritius’ 2022 submission to the CLCS, despite this document being filed virtually simultaneously with the Reply.

414. The Maldives further submits that “[t]here cannot be a first base of slope west of the Chagos Trough and then a second one to the east.” According to the Maldives, the purported new base of slope to the east of the Chagos Trough is in fact “located on an oceanic ridge on the deep ocean floor (which, pursuant to Article 76(3) of UNCLOS, does not form part of the continental margin).” It adds that, unlike the Maldives’ base of slope region, Mauritius’ single line does not have separate seaward and landward edges as required by the CLCS Guidelines.

415. The Maldives also raises evidentiary issues with regard to the Gardiner Seamounts path, contending that Mauritius has not provided the requisite measured bathymetric data in the region of the Gardiner Seamounts on which it could validly ground a case of submerged prolongation. The Maldives argues that Mauritius’

“Gardiner Seamounts theory is not supported by a shred of evidence under the CLCS Guidelines” and that the CLCS “would certainly reject Mauritius’ submission.” For the Maldives, the data that was presented by Mauritius in no way demonstrates the natural prolongation it asserts. The Maldives adds that, to the contrary, it shows that this purported path is unquestionably the deep ocean floor, well beyond the continental margin.

416. As to Mauritius’ argument that “Maldives’ CLCS submission supports Mauritius’ reliance on the overall elevated region to the east of the Chagos Trough”, the Maldives submits that the “lobe feature” referred to in its CLCS submission “is *not* the seafloor elevation on which Mauritius’ submerged prolongation theory relies” and that “this seafloor elevation occurs to the south of and separate from the Laccadive Basin.”

417. Regarding the third route to the critical foot of slope point set out by Mauritius in its oral submissions, the Maldives submits that this region is a flat part of the deep ocean floor, with depths approaching 5,000 metres, that can be approached only through the Laccadive Basin from the north. The Maldives contends that, while Mauritius suggests that the southernmost foot of slope point of the Maldives supports its identification of the saddle, this foot of slope point in fact supports Maldives’ position that Mauritius has no geomorphological connection to the east of the Chagos Trough through a saddle.

418. The Maldives submits that Mauritius’ data does not support the existence of a natural prolongation either through the Gardiner Seamounts or the “elevated saddle” across the north of the Chagos-Laccadive Ridge, and that “[n]othing in Mauritius’ data contradicts the existence of a morphological break within the Chagos Trough”. According to the Maldives, Mauritius has identified the base of slope with its landward edge not on the slope of the Chagos-Laccadive Ridge but on the flat deep ocean floor, and with its seaward edge located at the base of the Laccadive Basin. For the Maldives, however, “there is no saddle region and ... the base of slope is correctly identified at the base of the CLR [Chagos-Laccadive Ridge].”

419. The Maldives maintains that Mauritius' data does nothing to contradict the fact that "there is no submerged prolongation along the slight seafloor elevation associated with the North Boussole Fracture Zone ... which would enable Mauritius to reach the critical foot of slope point on which its claim to an OCS [outer continental shelf] entitlement relies".

420. As to the evidence required by the CLCS to establish entitlement, the Maldives submits that the CLCS will deem satellite altimetry-derived bathymetric data insufficient where there is not a clear route of submerged prolongation. The Maldives contends that satellite-derived data is "not always sufficient to ground an entitlement, in particular in the circumstances of this case", where the basis of Mauritius' claimed entitlement is not straightforward. It adds that, in relation to Mauritius' assertion that there was a submerged prolongation through the Gardiner Seamounts, "satellite data would be inadequate given that 'the asserted path is not a straightforward prolongation of the landmass'."

421. Regarding the first question posed by the Special Chamber to the Parties (see paragraph 57 above), the Maldives has responded that, if the Special Chamber

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

422. The Maldives adds that it does dispute the entirety of Mauritius' outer continental shelf claim, including its limits. It submits that, if the CLCS were to agree with the Maldives, "the delimitation line proposed by Mauritius would purport to grant to Mauritius half of an area in which it has no entitlement at all." In response to the contention of Mauritius that a judgment of the Special Chamber "would be binding, and would preclude the Parties from accepting recommendations from the CLCS that conflicted with it", the Maldives states that "the CLCS has the final word, not the Part XV procedures."



423. The Maldives, in response to the suggestion of Mauritius regarding the assistance of technical experts, states that “[t]his unprecedented proposal is clearly inappropriate.” It argues that “Mauritius is attempting to shift its burden of proof onto the Maldives and/or the Special Chamber.”

424. In response to the Registrar’s letter dated 16 August 2022 (see paragraph 45 above) requesting the Parties’ views on the necessity of arranging for an expert opinion, the Maldives submits that arranging an expert opinion regarding scientific and technical issues concerning the delimitation of the continental shelf beyond 200 nm is clearly unnecessary and manifestly inconsistent with principles of procedural fairness. It adds that “it would be ... necessarily prejudicial ... to questions of jurisdiction and admissibility that [the Maldives] has raised.”

425. The Maldives contends that an expert opinion is also clearly unnecessary because there is no evidence on which it could meaningfully comment. It submits that, as a matter of law, Mauritius’ claim as set out in its Memorial is manifestly unfounded, asserting that Mauritius acknowledged that the Maldives’ argument in this respect is legal in nature, not technical. According to the Maldives, “[t]here is, therefore, no need for any further expert report for the Special Chamber to dismiss Mauritius’ original claim to entitlement as set out in its Memorial.”

426. For the Maldives, “encroachment on the functions of the CLCS is manifest where a claim of natural prolongation is based on a factual determination that the continental margin is situated in a particular location”. It argues that, in order to pronounce on Mauritius’ claim of natural prolongation, an expert report would have to establish the precise location of the continental margin. In the Maldives’ view, “[t]here can be no doubt that this would constitute delineation of the outer limits of the continental shelf, which is clearly beyond the jurisdiction of the Special Chamber.”

\* \* \*

427. As the Tribunal stated in *Bangladesh/Myanmar*, “[d]elimitation presupposes an area of overlapping entitlements. Therefore, the first step in any delimitation is to

determine whether there are entitlements and whether they overlap” (*Bangladesh/Myanmar*, at p. 105, para. 397).

428. Thus, the question the Special Chamber should first address is whether the Parties have entitlements to a continental shelf beyond 200 nm in the area concerned and, if so, whether they overlap. If that is not the case, the Special Chamber may not proceed to delimitation.

429. The question of entitlement to the continental shelf beyond 200 nm entails the interpretation and application of article 76 of the Convention, which reads:

*Definition of the continental shelf*

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
  - (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
  - (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
- (b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4(a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

430. Both Parties have made submissions to the CLCS with respect to the area at issue in this case and their claims overlap, but the Commission has not yet made recommendations to them under article 76, paragraph 8, of the Convention. To that extent, the situation is similar to that in *Bangladesh/Myanmar*.

431. In that case, the Tribunal laid out and applied the standard of “significant uncertainty” when assessing the existence of a continental margin beyond 200 nm. It stated that, “[n]otwithstanding the overlapping areas indicated in the submissions of the Parties to the Commission, the Tribunal would have been hesitant to proceed

with the delimitation of the area beyond 200 nm had it concluded that there was significant uncertainty as to the existence of a continental margin in the area in question” (*Bangladesh/Myanmar*, at p. 115, para. 443).

432. In this regard, the Tribunal noted that “the Bay of Bengal presents a unique situation, as acknowledged in the course of negotiations at the Third United Nations Conference on the Law of the Sea” (*Bangladesh/Myanmar*, at p. 115, para. 444). It noted further that “as the thick layer of sedimentary rocks covers practically the entire floor of the Bay of Bengal, including areas appertaining to Bangladesh and Myanmar, in their submissions to the Commission, both Parties included data indicating that their entitlement to the continental margin extending beyond 200 nm is based to a great extent on the thickness of sedimentary rocks pursuant to the formula contained in article 76, paragraph 4(a)(i), of the Convention” (*ibid.*, at p. 115, para. 445). It added that, “[i]n view of uncontested scientific evidence regarding the unique nature of the Bay of Bengal and information submitted during the proceedings, the Tribunal is satisfied that there is a continuous and substantial layer of sedimentary rocks extending from Myanmar’s coast to the area beyond 200 nm” (*ibid.*, at p. 115, para. 446). The Tribunal accordingly concluded that “both Bangladesh and Myanmar have entitlements to a continental shelf extending beyond 200 nm. The submissions of Bangladesh and Myanmar to the Commission clearly indicate that their entitlements overlap in the area in dispute in this case” (*ibid.*, at p. 116, para. 449).

433. The Special Chamber will apply the standard of significant uncertainty in the present case. It notes that this standard serves to minimize the risk that the CLCS might later take a different position regarding entitlements in its recommendations from that taken by a court or tribunal in a judgment.

434. The Special Chamber notes that the Parties disagree as to Mauritius’ entitlement to the continental shelf beyond 200 nm. On the other hand, the entitlement of the Maldives to the continental shelf beyond 200 nm is uncontested between the Parties.

435. The Special Chamber will first examine Mauritius' claim of entitlement. If the Special Chamber finds that Mauritius has demonstrated its entitlement, it will proceed to examine the Maldives' entitlement. The fact that the Maldives' entitlement is not contested by Mauritius should not relieve the Maldives of the need to demonstrate that its continental shelf extends beyond 200 nm. This would minimize the risk of prejudice to the interests of the international community where final and binding limits of the continental shelf have yet to be established in accordance with article 76, paragraph 8, of the Convention.

436. The Special Chamber notes that Mauritius has identified a foot of slope point, FOS-VIT31B, on which its claim of entitlement to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region is based. The Special Chamber observes that Mauritius has advanced three different routes for natural prolongation to this critical foot of slope point.

437. First, in its Memorial and its 2021 preliminary information to the CLCS, Mauritius argued that its natural prolongation in the Northern Chagos Archipelago Region along the Chagos-Laccadive Ridge initially extends northwards from Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef. Mauritius explained that the Chagos Bank, Laccadive Plateau and Maldivé Ridge, which form the Chagos-Laccadive Ridge, are all connected, forming a single topographical and geomorphological continuity. It noted that, to the south and east of the Chagos Archipelago, there is a linear depression, the Chagos Trough, which runs alongside the Chagos-Laccadive Ridge.

438. In its Counter-Memorial, however, the Maldives stated that the foot of slope point in question could only be characterized as the natural prolongation of the Maldives' submerged land territory across the Maldives' seabed. It asserted that Mauritius could not validly claim an outer continental shelf entitlement based on the natural prolongation of another State's undisputed submerged land territory.

439. Second, Mauritius, in its Reply, and partly reflected in its 2022 submission to the CLCS, presented an additional path for natural prolongation to the critical foot of slope point across the Chagos Trough via the Gardiner Seamounts. According to

Mauritius, the Gardiner Seamounts are a feature that enables it to establish the natural prolongation of its land mass. Mauritius argues that the base of slope region starts southward of the Chagos-Laccadive Ridge, abutting the eastern extension of the ridge within its exclusive economic zone, and continues northward along the ridge extension, without encroaching on the exclusive economic zone of the Maldives, to the critical foot of slope point.

440. Third, in its oral pleadings, Mauritius submitted that it was also able to reach the critical foot of slope point by crossing the Chagos Trough via an “elevated saddle” to the north of the Chagos Archipelago. According to Mauritius, like the Gardiner Seamounts, this saddle also merges with the overall elevated region of the Chagos-Laccadive Ridge.

441. With respect to the first route presented by Mauritius, the Special Chamber notes that Mauritius does not dispute that it passes through the uncontested continental shelf of the Maldives within 200 nm.

442. The Special Chamber observes that, according to article 76, paragraph 1, of the Convention, “[t]he continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin”. It further observes that, according to paragraph 3 of the same article, “[t]he continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise.”

443. In applying these provisions, the Scientific and Technical Guidelines of the CLCS state in paragraph 2.2.3, as regards the test of appurtenance, that “[i]f a State is able to demonstrate to the Commission that the natural prolongation of its submerged land territory to the outer edge of its continental margin extends beyond the 200-nautical-mile distance criterion, the outer limit of its continental shelf can be delineated by means of the application of the complex set of rules described in paragraphs 4 to 10 [of article 76 of the Convention].”

444. Accordingly, in the Special Chamber's view, a coastal State must demonstrate a natural prolongation of *its* submerged land territory to the outer edge of *its* continental margin beyond 200 nm. It follows that a coastal State cannot validly claim an entitlement to a continental shelf beyond 200 nm based on the natural prolongation through another State's uncontested continental shelf. As the first route presented by Mauritius passes within the continental shelf of the Maldives within 200 nm that is uncontested by Mauritius, it cannot form a basis for Mauritius' natural prolongation to the critical foot of slope point and thus for its entitlement to the continental shelf beyond 200 nm.

445. As far as the second and third routes presented by Mauritius are concerned, i.e., crossing the Chagos Trough through the Gardiner Seamounts or an "elevated saddle", respectively, the Special Chamber notes that there is a fundamental disagreement between the Parties on a number of scientific and technical issues. According to the Maldives, the Chagos Trough creates a clear break in the submerged prolongation of the Chagos Archipelago landmass and natural prolongation could only be established to the critical foot of slope point if there were a way around the trough without encroaching on the Maldives' uncontested 200 nm limit. In the view of Mauritius, however, the Chagos Trough does not represent an insurmountable obstacle and it is possible to establish natural prolongation from the territory of Mauritius across the trough south of the equator.

446. The Special Chamber observes in this regard that the Maldives contends that neither the Gardiner Seamounts nor the "elevated saddle" provide Mauritius with a geomorphological connection to the east of the Chagos Trough. The Maldives argues that the purported new base of slope region to the east of the Chagos Trough is located on the deep ocean floor which, pursuant to article 76, paragraph 3, of the Convention, does not form part of the continental margin. Mauritius, on the other hand, argues that both the Gardiner Seamounts and the "elevated saddle" merge with the "overall elevated region" of the Chagos-Laccadive Ridge and therefore do not lie immediately next to the deep ocean floor.

447. The Special Chamber also notes that the Maldives maintains that "Mauritius has not provided the requisite measured bathymetric data in the region of the

Gardiner Seamounts on which it could validly ground a case of submerged prolongation” and that satellite data would be inadequate given that the asserted path is not a straightforward prolongation of the landmass. The Maldives adds that the data presented by Mauritius does not support the existence of a natural prolongation either through the Gardiner Seamounts or the “elevated saddle” and that nothing in the data contradicts the existence of a morphological break within the Chagos Trough. Mauritius argues, however, that the gaps in bathymetric data, identified as such in both Parties’ submissions to the CLCS and which are not located within the base of slope region, do not render such data inadequate for the purpose of establishing natural prolongation. It adds that both Parties have relied, to some extent, on satellite-derived bathymetry.

448. On the basis of its assessment of the Parties’ pleadings in the present proceedings, and taking into account the fundamental disagreement between the Parties on the aforementioned scientific and technical issues, the Special Chamber is of the view that there is significant uncertainty as to whether the second and third routes presented by Mauritius could form a basis for its natural prolongation to the critical foot of slope point and thus for its entitlement to the continental shelf beyond 200 nm.

449. In summary, in the present case, Mauritius has presented three different routes for natural prolongation to the foot of slope point, FOS-VIT31B, on which it bases its claim of entitlement to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region. While the Special Chamber considers that the first route is impermissible on legal grounds under article 76 of the Convention, there is significant uncertainty as to whether the second and third routes could form a basis for Mauritius’ natural prolongation to the critical foot of slope point.

450. Given the significant uncertainty, the Special Chamber is not in a position to determine the entitlement of Mauritius to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region. It follows that it is not necessary for the Special Chamber to address the Maldives’ entitlement in the present case.



451. Consequently, in the circumstances of this case, the Special Chamber will not proceed to delimit the continental shelf beyond 200 nm between Mauritius and the Maldives, as requested by Mauritius.

452. The Special Chamber notes in this regard that, in maritime delimitation cases, international courts and tribunals refrain from delimiting areas where the rights of other coastal States may be affected. Application of the standard of significant uncertainty affords similar protection to the interests of the international community in the Area and the common heritage principle.

453. In the view of the Special Chamber, the exercise of caution is called for in the circumstances of the present case, where there may be a risk of prejudice to the interests of the international community in the Area and the common heritage principle.

454. As reflected in paragraph 45 above, the Special Chamber considered whether it would be necessary to arrange for an expert opinion in the present case, pursuant to article 82 of the Rules, on scientific and technical issues concerning the delimitation of the continental shelf beyond 200 nm. The Special Chamber took note of the views expressed by the Parties in this regard. It came to the conclusion that, in the circumstances of this case, it would not be appropriate to arrange for such an opinion.

455. The Special Chamber is conscious of the situation that, although both Parties in the present case have made submissions to the CLCS, the Commission is currently not able to make recommendations to them under article 76, paragraph 8, of the Convention. This impasse follows from the fact that neither Party has given its consent, in accordance with paragraph 5(a) of Annex I to the Rules of Procedure of the CLCS, for the Commission to consider the other Party's submission. If this impasse remains unresolved, neither Party will be able to receive recommendations from the CLCS and establish final and binding outer limits of its continental shelf on their basis.

456. In this regard, the Special Chamber takes note of the relevant discussion between the Parties during the oral proceedings, including the statement by the Maldives on 24 October 2022 suggesting that “both Parties could simply write to the CLCS expressing their consent for each respective submission to be considered without impediment.” The Special Chamber encourages the Parties to contemplate giving their consent to the CLCS allowing it to consider each other’s submissions.

#### **D. Conclusion**

457. In light of the foregoing, the Special Chamber does not find it necessary to address the fourth objection raised by the Maldives.

458. The Special Chamber concludes that it will not proceed to delimit the continental shelf beyond 200 nm between Mauritius and the Maldives in the Indian Ocean.

#### **X. Costs relating to the geodetic survey**

459. The Special Chamber will now turn to Mauritius’ claim for compensation for the costs it incurred in connection with its survey of 7 February 2022 (see paragraphs 37 to 41 above).

460. According to Mauritius, in preparation for its survey of Blenheim Reef and its appurtenant waters, it sought the Maldives’ assistance in allowing its survey team to travel through Gan in the Maldives “for reasons of efficiency and practicality, and to save significantly on time and cost.”

461. Mauritius states that, in light of the conditions imposed by the Maldives, however, Mauritius was not able to embark on the survey from Gan in the Maldives and was instead compelled to make alternative arrangements, resulting in significant additional costs. Mauritius accordingly requested the Special Chamber to order that

these additional and “unjustified costs” incurred by Mauritius be paid by the Maldives.

462. For its part, the Maldives asserts that it cooperated in good faith with respect to the survey and that “Mauritius’ claim for compensation against the Maldives is baseless.” It asserts further that “Mauritius does not address the basis for a legal obligation to cooperate with the Survey in the circumstances of this matter.” The Maldives accordingly requested the Special Chamber to dismiss the claim of Mauritius.

\* \* \*

463. The Special Chamber notes that, as a result of the understanding reached between the Parties, as reflected in paragraphs 51 and 52 above, Mauritius is no longer pursuing its claim for compensation against the Maldives regarding costs incurred by Mauritius in connection with the survey of February 2022.

464. The Special Chamber notes further that, in its final submissions at the conclusion of the oral proceedings, Mauritius did not retain its claim for compensation against the Maldives.

465. The Special Chamber therefore places on record the goodwill of the Parties in resolving the issue of the survey costs by mutual understanding, as reflected in the letter of the President of the Maldives addressed to the Prime Minister of Mauritius dated 22 August 2022 and in the letter of the Prime Minister of Mauritius to the President of the Maldives dated 23 September 2022.

## **XI. Operative clauses**

466. For these reasons,

THE SPECIAL CHAMBER,

(1) Unanimously,

*Decides* that the single maritime boundary delimiting the exclusive economic zones and the continental shelves of the Parties within 200 nm extends from west to east between the intersections of the respective 200 nm limits determined in paragraphs 248 and 250 above and is composed of geodetic lines connecting the following points in WGS 84 as geodetic datum: Point 1 with coordinates 2° 17' 21.4" S and 70° 11' 56.2" E; turning points 2 to 36 with the coordinates identified in paragraph 249 above; Point X (Point 37) with coordinates 3° 07' 28.9" S and 73° 19' 11.0" E; and Point Y (Point 38) with coordinates 3° 20' 54.8" S and 75° 12' 52.1" E.

(2) Unanimously,

*Finds* that its jurisdiction to delimit the continental shelf between the Parties includes the continental shelf beyond 200 nm.

(3) Unanimously,

*Rejects* the objection raised by the Maldives to the admissibility of Mauritius' claim to the continental shelf beyond 200 nm on the grounds that Mauritius' submission to the CLCS was not filed in a timely manner.

(4) Unanimously,

*Finds* that, in the circumstances of the present case, it is not in a position to determine the entitlement of Mauritius to the continental shelf beyond 200 nm in the Northern Chagos Archipelago Region and *decides* that, consequently, it will not

proceed to delimit the continental shelf between Mauritius and the Maldives beyond 200 nm.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-eighth day of April, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of the Republic of Mauritius and to the Government of the Republic of the Maldives.

*(signed)*

Jin-Hyun PAIK,  
President of the Special Chamber

*(signed)*

Ximena HINRICHS OYARCE,  
Registrar

*President* PAIK, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Special Chamber.

*(initialled)* J.-H.P.

*Judge* HEIDAR, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Special Chamber.

*(initialled)* T.H.

*Judge ad hoc* SCHRIJVER, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Special Chamber.

(initialled) N.J.S.