INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

SEABED DISPUTES CHAMBER

CASE CONCERNING THE CONDUCT OF THE INTERNATIONAL SEABED AUTHORITY IN ITS INQUIRY OF TONGA OFFSHORE MINING LTD.

TONGA OFFSHORE MINING LTD. (Applicant) v. THE INTERNATIONAL SEABED AUTHORITY (Respondent)

REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES SUBMITTED BY TONGA OFFSHORE MINING LTD. UNDER ARTICLE 290(1) OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

30 MAY 2026

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PART I

REQUEST FOR PROVISIONAL MEASURES SUBMITTED BY TONGA OFFSHORE MINING LTD.

CHAPTER 1
INTRODUCTION

1. This Request for the prescription of provisional measures ("**Request**") is submitted by Tonga Offshore Mining Ltd. ("**TOML**" or the "**Applicant**") pursuant to Article 290 of the United Nations Convention on the Law of the Sea ("**UNCLOS**") and Article 25 of the Statute of the International Tribunal for the Law of the Sea (the "**Tribunal**").

2. TOML is a company duly incorporated under the laws of the Kingdom of Tonga ("**Tonga**") and a contractor sponsored by Tonga within the meaning of Part XI of UNCLOS and Annex III thereto. TOML holds a contract with the International Seabed Authority (the "**Authority**" or the "**Respondent**") for the exploration of polymetallic nodules in the Area, dated 11 January 2012 ("**Exploration Contract**").[1]

3. The present Request arises out of a dispute between TOML and the Authority falling within the scope of Article 187(c)(i) and Article 187(c)(ii) of UNCLOS, namely a dispute concerning "*the interpretation or application of a relevant contract or a plan of work*" and "*acts or omissions of a party to a contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests*."

4. In particular, the dispute concerns the conduct of the Authority, acting through its Legal and Technical Commission ("**LTC**"), in initiating and pursuing an inquiry into alleged "*possible non-compliance*" by TOML with its contractual obligations. TOML submits that this conduct constitutes a series of acts and omissions that are directed at TOML and that directly and adversely affect its legitimate interests as a contractor engaged in activities in the Area.

5. The inquiry gives rise to serious concerns as to its legal and factual basis, its procedural fairness, and its conformity with the institutional framework established under Part XI of UNCLOS. TOML submits that the acts and omissions of the Authority in pursuing this inquiry, taken collectively and individually, constitute conduct that directly affects TOML's legal and commercial interests.

[1] **Annex 1**: Exploration Contract between TOML and the Authority dated 11 January 2012.

6. On 30 May 2026, TOML filed an Application instituting proceedings before the Seabed Disputes Chamber (the "**Chamber**") concerning this dispute ("**Application**"). However, the circumstances require the prescription of provisional measures as a matter of urgency in order to preserve TOML's rights pending the final decision of the Chamber on the merits. In accordance with Article 290 of UNCLOS, provisional measures are necessary where actions capable of causing irreparable prejudice may occur before the dispute is finally resolved.

7. Unless suspended, the continuation of the LTC's inquiry exposes TOML to a real and imminent risk of prejudice, including the adoption of findings or recommendations that may have significant legal and practical consequences for TOML's activities. Such acts would not only affect TOML's rights but also risk pre-empting or undermining the adjudication of the dispute on the merits.

8. The continuation of the contested conduct risks aggravating and extending the dispute between the Parties. The persistence of investigative steps, and the possibility of further action by the Authority on the basis of those steps, may entrench the Parties' positions and compromise the effectiveness of the Chamber's eventual decision.

9. The urgency of the present Request is underscored by the Authority's requirement that TOML submit a substantive response to the inquiry by 31 May 2026, notwithstanding the Authority's refusal to provide the procedural clarification and information requested by TOML. Following that deadline, the LTC is scheduled to meet between 29 June and 10 July 2026 and is expected to proceed with its consideration of the inquiry, with any findings or recommendations liable to be transmitted to the Council at its session from 13 to 24 July 2026. These steps will occur before the Chamber is in a position to render a decision on the Application, giving rise to an immediate and unavoidable risk of prejudice.

10. In these circumstances, TOML respectfully requests the Chamber to exercise its powers under Article 290 of UNCLOS to prescribe provisional measures in order to:
    (a) preserve TOML's rights pending the final determination of the dispute;
    (b) prevent irreparable prejudice to TOML resulting from the ongoing acts and omissions of the Authority; and
    (c) ensure that the Authority does not aggravate or extend the dispute during the course of these proceedings.

11. The present Request is made in accordance with the settled jurisprudence of the Tribunal, which recognizes that provisional measures are an essential safeguard to ensure that rights in dispute are not frustrated by unilateral conduct prior to a final decision.

CHAPTER 2
STATEMENT OF FACTS

12. The facts relevant to this dispute are set out in detail at paragraphs 25-53 of the Application.

13. In brief, on 21 July 2025, the Council of the Authority adopted a decision (ISBA/30/C/19) requesting the Secretary-General collect additional information from contractors potentially at risk of non-compliance with their contractual obligations.[2] The LTC was tasked with reviewing this information and reporting back during the first part of the 31st session of the Authority.

14. Pursuant to Council decision ISBA/30/C/19, on 15 January 2026, the Secretary-General issued Circular/2026/001 requiring all contractors to submit detailed information by 10 February 2026 regarding any risks of non-compliance, as well as the measures contractors had in place to ensure compliance.[3]

15. On 9 February 2026, TOML submitted its response to the Secretary-General's Circular/2026/001, confirming that it was fully compliant with its contractual obligations and that it was not aware of any circumstances that might give rise to non-compliance. It also described its compliance monitoring systems.[4] At the same time, TOML challenged the legality of both the 21 July 2025 Council Decision and the 15 January 2026 Circular, arguing that they exceeded the Secretary-General's authority and unlawfully delegated supervisory powers not provided for under UNCLOS or the applicable regulatory framework. Nevertheless, TOML responded in good faith while expressly reserving its rights.

16. Between 23 February and 6 March 2026, the LTC met during the first part of the 31st session and issued its reports on 6 March 2026, noting that all 21 contractors had responded and reported no risk of non-compliance.[5] While the LTC's report did not explicitly name TOML, it contained references, including through footnoted materials and contextual indicators, that enabled TOML to be readily identified as the contractor concerned. This was not incidental. The structure and content of the report demonstrate that the LTC had formed a view as to a specific contractor

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2 "Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission" dated 21 July 2025 (ISBA/30/C/19).

3 **Annex 2**: The Secretary-General of the Authority's Circular/2026/001 dated 15 January 2026.

4 **Annex 3**: Letter from TOML to the Authority dated 9 February 2026.

5 Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its thirty-first session" dated 6 March 2026 (ISBA/31/C/4); "Report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations" dated 6 March 2026 (ISBA/31/C/4/Add.1).

requiring “specific attention” and communicated that identification in a manner that was intelligible to participants within the Authority’s processes.

17. The identification of TOML was therefore a deliberate act of the LTC, notwithstanding the absence of express naming. That act engaged legal consequences for TOML within the Authority’s regulatory framework and triggered subsequent escalation.

18. The manner in which TOML was identified through the LTC’s report is itself inconsistent with the criteria and methodology set out in ISBA/29/LTC/5.[6] Under that framework, the identification of a contractor as requiring “*specific attention*” forms part of a structured process involving prior engagement with the contractor, assessment against defined criteria, and an opportunity to address any perceived deficiencies before any escalation. The LTC’s decision to identify TOML through indirect references in its report, without prior notice, explanation, or engagement, represents a clear departure from that process and underscores the arbitrary nature of the identification.

19. During the Council’s consideration of the LTC’s report, concerns were expressly raised by Sponsoring States, including Tonga and the Republic of Nauru, regarding the process by which contractors had been identified as requiring “specific attention” and the absence of sufficient transparency or explanation. Notably, no member of the LTC was present to respond to those concerns or provide clarification, unlike prior practice where the Commission has attended Council meetings and engaged directly with the Council in explaining its findings.[7] This absence deprived the Council of the ability to meaningfully scrutinize the LTC’s methodology and underscores the lack of procedural fairness and accountability surrounding the identification of TOML.

20. By letter dated 16 March 2026, the Authority confirmed that TOML had been identified as requiring specific attention and requested further detailed information by 31 May 2026 regarding whether its activities might be inconsistent with UNCLOS or its contractual rights.[8]

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6 “Criteria for identifying contractors that have responded insufficiently or incompletely, or failed to respond, to the calls from the Council to address issues identified by the Legal and Technical Commission in relation to their contractual obligations” dated 19 April 2024 issued by the Legal and Technical Commission (ISBA/29/LTC/5).

7 See, by way of example, **Annex 10**: a post from the Authority dated 20 November 2024 on the professional networking platform, LinkedIn, showing the Chair of the LTC attending Council meetings during Part II of the 29th Session of the Authority to present the LTC’s work to the Council in person.

8 **Annex 4**: Letter from the Authority to TOML dated 16 March 2026.

21. Following the Council's adoption on 19 March 2026 of a further decision (ISBA/31/C/18), which endorsed the LTC's ongoing inquiry while emphasizing due process, TOML wrote to the LTC on 22 April 2026 seeking clarification of the procedure and the legal and factual basis for the LTC's identification of TOML as a contractor requiring "*specific attention*" and the request for additional information.[9]

22. By letter dated 13 May 2026, the Authority, through the Chair of the LTC wrote to TOML (by way of a letter received by TOML on 15 May 2026), declining to substantively respond to TOML's requests and stating that it would not be feasible to address those matters prior to the LTC's meeting.[10] At the same time, the Authority, through the LTC, expressly maintained the requirement that TOML submit a substantive response by 31 May 2026. This position is inconsistent with the LTC's established practice of undertaking intersessional work, including in relation to the monitoring of contractor compliance.[11] TOML is therefore required to respond to allegations of potential non-compliance without being informed of the factual or legal basis of the inquiry, the applicable criteria, or the process by which its response will be assessed. This reinforces the procedural deficiencies at the heart of the present dispute.

23. The Authority's subsequent correspondence of 26 May 2026 confirms that TOML's requests had not been substantively considered by the Commission at the time of that response, but were only thereafter "forwarded" and stated to be "currently under evaluation". This demonstrates that, at the time when TOML was required to respond to the inquiry, the Commission had not engaged with TOML's procedural requests.

24. On 18 May 2026, TOML issued a Notice of Dispute to the Authority, requesting consultations by 29 May 2026. TOML maintained that, while willing to engage constructively and in good faith, the Authority's failure to provide necessary

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9 "Decision of the Council relating to the report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations (ISBA/30/C/19)" dated 19 March 2026 (ISBA/31/C/18); **Annex 5**: Letter from TOML to the Authority dated 22 April 2026.

10 **Annex 6**: Letter from the Authority to TOML dated 13 May 2026.

11 See, for example, **Annex 9**: Letter from the Authority to TOML dated 5 August 2024 in relation to the LTC's assessment of TOML's annual report. The letter notes at p. 2 that, "*The Commission will conduct its assessment intersessionally, and TOML will be given the opportunity to respond to the Commission's observations and take corrective actions in accordance with the process articulated in the Criteria, and the Modalities for facilitating an exchange of views between contractors and members of the Commission (ISBA/29/LTC/6)*." See also, "Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its thirtieth session" dated 7 July 2025 (ISBA/30/C/4/Add.1), para. 8, which explicitly notes the LTC's intersessional work with potentially non-compliant contractors in May 2025.

particulars and procedural assurances had prevented it from responding meaningfully to the Authority's letter dated 16 March 2026.[12]

25. On 26 May 2026, the Authority, through the Secretary-General, wrote to TOML (by way of a letter received by TOML on 27 May 2026, i.e., just two days before TOML's proposed deadline for consultations), in which the Authority acknowledged TOML's concerns but deferred any engagement on these concerns pending a "*thorough legal assessment*," offering no concrete timeline and merely asserting that the LTC was considering how TOML's request "*may be accommodated*." The 26 May letter did not address the substance of the Notice of Dispute or relieve TOML of its obligation to respond to the LTC's questions (as set out in the Authority's 16 March letter) by 31 May 2026.[13] In other words, the Authority acknowledged that these matters remained unresolved at the time when TOML was required to respond to the inquiry, and were only now said to be under consideration.

26. To date, neither the LTC nor the Authority has substantively engaged with TOML in relation to the dispute.

12 **Annex 7**: Notice of Dispute issued by TOML to the Authority dated 18 May 2026.

13 **Annex 8**: Letter from the Authority to TOML dated 26 May 2026.

CHAPTER 3
JURISDICTION

27. Article 290(1) of UNCLOS provides as follows:

"*If a dispute has been duly submitted to a court or tribunal which considers that prima facie it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision*." (*emphasis added*)

28. It is settled in case law that, in accordance with article 290(1) of UNCLOS, in order to prescribe provisional measures, the Chamber "*need not finally satisfy itself that it has jurisdiction on the merits of the case*", but it is sufficient that "*the provisions invoked by the Applicant appear prima facie to afford a basis on which the jurisdiction of the Tribunal might be founded*."[14]

29. Following good faith attempts to settle the dispute amicably and to exchange views with the Authority, TOML instituted proceedings before the Chamber on 30 May 2026. As noted in the Application instituting the proceedings, the dispute concerns a series of acts and omissions of the Authority, acting through the LTC, in initiating and pursuing an inquiry into TOML's alleged "*possible non-compliance*" with its contractual obligations, which acts and omissions are directed at TOML and directly affect its legitimate interests in the conduct of its activities in the Area.[15]

30. The jurisdiction of the Chamber over such a dispute is expressly provided for in Article 187(c)(ii) of UNCLOS, which confers jurisdiction over "*disputes with respect to activities in the Area*" including "*disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning* […] *acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests*".

31. As shown in the Application, each of the elements of Article 187(c)(ii) is satisfied in the present case.[16]

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14 The Zheng He case (Luxembourg v. Mexico) Provisional Measures, Order of 27 July 2024, para 57; The M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Provisional Measures, Order of 11 March 1998, para. 29; The M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain), Provisional Measures, Order of 23 December 2010, paras. 39 and 69; Dispute concerning the delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, para. 34.

15 See Application, paras. 21-24.

16 See Application, paras. 1-20.

32. First, the dispute is one between parties to a contract within the meaning of Part XI of UNCLOS. TOML is a contractor within the meaning of Article 153, paragraph 2(b), and Annex III of UNCLOS, and the Authority is the other party to the Exploration Contract.

33. Second, the dispute concerns "*acts or omissions*" of a party to that contract. The conduct challenged by TOML consists of a series of affirmative acts and omissions undertaken by the Authority through the LTC, including the procedural conduct of the LTC's identification and inquiry into TOML as a contractor requiring "*specific attention to possible non-compliance*".[17]

34. Third, those acts and omissions plainly "*relat*[e] *to activities in the Area*." The inquiry concerns TOML's performance of its contractual obligations as a contractor engaged in exploration activities for polymetallic nodules in the Area and is therefore intrinsically linked to activities governed by Part XI of UNCLOS.

35. Fourth, the acts and omissions are "*directed to the other party or directly affecting its legitimate interests*." The inquiry is specifically directed at TOML and concerns its conduct as a contractor. Moreover, the continuation of that investigation directly affects TOML's legal interests, including its standing as a contractor within the Authority's regulatory regime, its right and ability to carry out its activities in the Area, and its broader participation in the regime governing the Area.

36. As stated in the Application,[18] the dispute also concerns the interpretation and application of the Exploration Contract within the meaning of Article 187(c)(i) of UNCLOS, which confers jurisdiction on the Chamber over disputes relating to "*the interpretation or application of a relevant contract or a plan of work*." TOML and the Authority are both parties to the Exploration Contract, Section 13(4) of which imposes a clear obligation on the Authority "*to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention*." By identifying TOML as a contractor requiring "*specific attention*" without prior notice, without disclosure of the factual or legal basis, and by requiring TOML to respond while refusing to provide the requested procedural information and safeguards, the Authority has failed to exercise its functions in good faith in accordance with that obligation.

37. Accordingly, the dispute squarely falls within the scope of Articles 187(c)(i) and 187(c)(ii) of UNCLOS and is therefore within the jurisdiction of the Chamber.

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17 See Application, paras. 21-24.

18 See Application, paras. 1-20.

38. The present Request is not premature. The identification of TOML and the continuation of the inquiry without due process already directly affect TOML's rights and place it under an immediate requirement to respond within a procedurally defective framework.

39. In light of the foregoing, the requirements of Article 290(1) of UNCLOS are clearly met. The Chamber has *prima facie* jurisdiction under Articles 187(c)(i) and 187(c)(ii) and is accordingly competent to prescribe the provisional measures requested by TOML.

CHAPTER 4
STATEMENT OF LEGAL GROUNDS AND CHARACTERIZATION OF URGENCY

40. TOML seeks provisional measures to protect against the serious and irreparable harm to its rights that will be caused by the Authority continuing to conduct its inquiry of TOML. The continuation of the inquiry in its present form would also aggravate and extend the dispute. The Authority would be permitted to advance and potentially act upon views formed through a process whose lawfulness is directly in issue before the Chamber. This creates a risk of pre-judging matters that fall within the Chamber's jurisdiction and of rendering its eventual decision ineffective.

41. **Part A** of this Chapter summarizes the measures TOML respectfully requests this Chamber to prescribe, and **Part B** sets out the reasons why the measures requested are appropriate. **Part C** establishes that the Authority's identification of TOML as a contractor requiring "*specific attention*" and its ongoing inquiry have resulted in continuing, irreparable harm to TOML that should urgently be addressed through the prescription of provisional measures. This chapter also sets out in **Part D** the possible consequences if this Chamber does not grant TOML's request for provisional measures.

I. The Provisional Measures Requested

42. TOML respectfully requests the Chamber to prescribe the following provisional measures:
    (a) Order the Authority to immediately suspend the LTC's inquiry regarding the alleged "*possible non-compliance*" of TOML with its contractual obligations, pending the final decision of the Chamber;
    (b) Order the Authority to refrain from taking, authorizing, or permitting any further steps or measures in connection with that inquiry pending the final decision of the Chamber;
    (c) Order the Authority to ensure that no recommendations, findings, reports, or other outputs arising from the LTC's inquiry are adopted, issued, published, communicated, or otherwise relied upon pending the final decision of the Chamber;
    (d) Pending the final decision of the Chamber, prohibit the Authority from taking any action that might aggravate or extend the dispute, or prejudice the execution of any decision the Chamber may render; and
    (e) Order such other provisional measures as the Chamber considers necessary to preserve TOML's rights and to ensure the effectiveness of its eventual decision.

II. The Appropriateness of the Provisional Measures Requested

43. Under Article 290(1) of UNCLOS, provisional measures may be prescribed "*to preserve the respective rights of the parties to the dispute*". At this stage of the proceedings, the Chamber "*does not need to concern itself with the competing claims of the Parties and* [...] *it needs only to satisfy itself that the rights which* [the Parties] *claim and seek to protect are at least plausible"* (*emphasis added*).[19] Indeed, the Chamber "*is not called upon to determine definitively whether the rights claimed by the applicant exist*",[20] and at this stage TOML is not required to furnish comprehensive, detailed evidence to establish its arguments in full.

44. The rights that TOML seeks to protect in these proceedings are more than plausible. TOML's rights invoked in these proceedings are a central element of the law of the sea and the governance of the Area. They arise under UNCLOS, the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ("**Exploration Regulations**"), the Exploration Contract, and general principles of international law, including:

(a) the right to due process and fair treatment, including the right to be informed of the case against it, to respond to any allegations, and to have any determination affecting its rights made through a lawful, transparent, and impartial process, including as required by the Council's Decision ISBA/31/C/18;
(b) the right to be treated in a non-discriminatory manner in the exercise of the Authority's powers and functions, as reflected in Article 152(1) of UNCLOS;
(c) the right not to be subjected to unlawful or ultra vires acts by the Authority, including acts that exceed the powers conferred on it under UNCLOS and the Exploration Regulations;
(d) the right to a stable and predictable regulatory framework, including the right to have any compliance assessments undertaken, strictly in accordance with UNCLOS, the Exploration Regulations, and the existing rules, regulations and procedures of the Authority;
(e) the right to have the Exploration Contract performed in good faith, in accordance with Section 13(4) of the Exploration Contract, including the

19 "Enrica Lexie" (Italy v. India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p. 182, at p. 197, para. 84; The "Zheng He" case (Luxembourg v. Mexico) Provisional Measures, Order of 27 July 2024, para. 107; Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Cote d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146, at p. 158, para. 58; Detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018-2019, p. 283, at p. 305, para. 91; M/T "San Padre Pio" (Switzerland v. Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018-2019, p. 375, at p. 393, para. 77.

20 The "Zheng He" case (Luxembourg v. Mexico), Provisional Measures, Order of 27 July 2024, para. 119.

right to have the Authority exercise its powers in a manner consistent with its obligations and not in a manner that prejudices the Contractor; and

(f) the right to have its legitimate interests safeguarded in the conduct of activities in the Area.

45. The Authority's conduct, as set out in the Application,[21] provides compelling support for the plausibility of TOML's rights. In particular, the arbitrary identification of TOML for "*specific attention to possible non-compliance*" raises serious concerns under Article 152(1) of UNCLOS, which explicitly prescribes that the Authority "*shall avoid discrimination in the exercise of its powers and functions*". TOML was singled out, without any transparent explanation or discernible criteria, among a range of contractors, giving rise to a strong inference that its right to non-discriminatory treatment has been violated

46. Importantly, the LTC's identification of TOML was not carried out in accordance with its established criteria and methodology for identifying contractors at risk of non-compliance, as set out in ISBA/29/LTC/5.[22] Those criteria require a structured and transparent process, including engagement with the contractor concerned before any escalation or identification. Under the framework reflected in ISBA/29/LTC/5, concerns relating to contractors' performance are addressed through a structured process of communication, response, and, where necessary, progressive escalation, with any public identification of non-compliance occurring only after prior engagement and an opportunity for corrective action.[23] The manner in which TOML was singled out through the report, without prior notice, explanation, or opportunity to respond, constitutes a clear departure from that framework and gives rise to a serious and credible claim that its right to a stable, predictable, and lawfully administered regulatory regime has been disregarded.

47. To the extent that the Authority may rely on materials referenced in footnotes to the LTC's report as a basis for TOML's identification, such reliance cannot cure the fundamental procedural defects in the process. Those materials were neither disclosed to TOML in advance nor subjected to any form of adversarial scrutiny. Nor were they applied transparently or in accordance with the criteria set out in ISBA/29/LTC/5. The existence of undisclosed or ambiguously referenced material

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21 Application, paras. 21-24.

22 "Criteria for identifying contractors that have responded insufficiently or incompletely, or failed to respond, to the calls from the Council to address issues identified by the Legal and Technical Commission in relation to their contractual obligations" dated 19 April 2024 issued by the Legal and Technical Commission (ISBA/29/LTC/5).

23 "Criteria for identifying contractors that have responded insufficiently or incompletely, or failed to respond, to the calls from the Council to address issues identified by the Legal and Technical Commission in relation to their contractual obligations" dated 19 April 2024 issued by the Legal and Technical Commission (ISBA/29/LTC/5).

cannot justify the departure from established procedures or the denial of TOML's right to be informed of the case against it.

48. The Authority's conduct to date, including its failure to disclose the evidence, criteria, or methodology underlying TOML's identification is manifestly inconsistent with basic standards of due process and is sufficient, at this stage, to establish a clear and credible basis for TOML's claim that its rights to due process, transparency, and fair treatment have been breached. The Authority's subsequent reliance, in its letter dated 13 May 2026, on the LTC's internal procedural timing, contrary to its own established intersessional practice,[24] further underscores that the denial of due process in this case is not incidental but systemic. This conclusion is reinforced by the Authority's confirmation that TOML's procedural requests were only subsequently placed before the Commission for consideration, rather than having been addressed at the time when TOML was required to respond.

49. That conclusion is reinforced by the Authority's own governing framework. The Council's binding decision (ISBA/31/C/18), expressly requires the LTC "*to ensure due process, transparency and fairness at every stage in the conduct of this inquiry, including by providing contractors and Sponsoring States with the right to respond*." The manner in which the inquiry has been conducted in relation to TOML — characterized by the absence of prior engagement, the withholding of relevant information, and the denial of any meaningful opportunity to respond — is plainly incompatible with those requirements and strongly supports the plausibility of TOML's asserted procedural rights.

50. In addition, the Authority's conduct gives rise to a plausible claim that it has failed to act in good faith and in accordance with Section 13(4) of the Exploration Contract in the performance of its obligations. The obligation of good faith requires the Authority to exercise its powers in a manner consistent with the contractual framework agreed between the Parties and with due regard to the Contractor's rights and legitimate expectations. By disregarding the procedural safeguards inherent in that framework and proceeding directly to measures that prejudice TOML's position, the Authority has acted in a manner that is incompatible with both

[24] See, for example, **Annex 9**: Letter from the Authority to TOML dated 5 August 2024 in relation to the LTC's assessment of TOML's annual report. The letter notes at p. 2 that, "*The Commission will conduct its assessment intersessionally, and TOML will be given the opportunity to respond to the Commission's observations and take corrective actions in accordance with the process articulated in the Criteria, and the Modalities for facilitating an exchange of views between contractors and members of the Commission (ISBA/29/LTC/6)*." See also, "Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its thirtieth session" dated 7 July 2025 (ISBA/30/C/4/Add.1), para. 8, which explicitly notes the LTC's intersessional work with potentially non-compliant contractors in May 2025.

the letter and the spirit of its contractual obligations and that undermines the integrity of the contractual relationship.

51. Taken together, these elements more than satisfy the applicable standard. They demonstrate, clearly and convincingly, that the rights invoked by TOML are, at the very least, plausible within the meaning of Article 290(1) of UNCLOS.

52. The procedural deficiencies identified are not capable of being remedied at a later stage. Due process rights, including the right to prior notice, disclosure of the basis of the inquiry, and a meaningful opportunity to be heard, must be afforded at the formative stages of an inquiry. Once views are formed within the Authority's institutional processes without such safeguards, subsequent procedural steps cannot retroactively restore fairness or eliminate the prejudice already caused.

III. The Real and Imminent Risk of Irreversible Prejudice

53. Past cases before the Tribunal confirm that provisional measures under Article 290 of UNCLOS may be prescribed where "*the urgency of the situation so requires*".[25] In this context, the Chamber must determine "*whether there is a risk of irreparable prejudice to the rights of the parties to the dispute and whether such risk is real and imminent*".[26]

54. In the present case, the risk of irreparable prejudice is both real and imminent. The LTC is scheduled to meet from 29 June to 10 July 2026, followed by the Council session from 13 to 24 July 2026, and is expected to proceed with its inquiry and produce findings or recommendations. That inquiry, however, is already irredeemably tainted by fundamental procedural defects, including the arbitrary and discriminatory identification of TOML without notice, disclosure, or an opportunity to be heard. Those defects cannot now be cured. The urgent need for provisional measures lies in preventing the Authority's adoption of further outputs that would compound this prejudice in ways that cannot later be reversed. Once such findings or recommendations are formed, transmitted, or relied upon within the Authority's institutional processes, they will inform and shape subsequent deliberations of the LTC and the Council in a manner that cannot be reversed or neutralized ex post facto, even if the Chamber ultimately finds in TOML's favor.

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25 The "Zheng He" case (Luxembourg v. Mexico), Provisional Measures, Order of 27 July 2024, para. 126.

26 The "Zheng He" case (Luxembourg v. Mexico), Provisional Measures, Order of 27 July 2024, para. 126; See also Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Cote d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146, at pp. 156 and 161, paras. 42 and 74; "Enrica Lexie" (Italy v. India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p. 182, at p. 197, para. 87; Detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018-2019, p. 283, at p. 307, para. 100; M/T "San Padre Pio" (Switzerland v. Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018-2019, p. 375, at p. 400, para. 111.

55. Further, while the procedurally defective manner in which the LTC has conducted its inquiry has already harmed TOML's standing within the Authority, there is additional concern with respect to imminent escalation. Any adverse findings or recommendations concerning TOML, once produced or circulated, would entrench reputational and institutional damage beyond repair.

56. The Chamber's intervention is therefore essential to prevent the ongoing harm and prejudice suffered by TOML, including through the continued violation of its rights to due process, fair treatment, and non-discrimination. If the Authority's inquiry is left to proceed while these proceedings are on foot, those violations will produce consequences that no final decision of this Chamber could fully remedy.

57. This urgency is heightened by the fact that the Authority has given no indication that it intends to suspend or modify the inquiry. On the contrary, the Authority has indicated that it requires further time to consider TOML's procedural requests, while continuing to require compliance with, and to advance, toward concrete outcomes, creating an immediate risk of further prejudicial steps taken towards TOML.

58. In these circumstances, provisional measures are urgently required to prevent further irreparable harm and to preserve TOML's rights pending the Chamber's final decision.

IV. Consequences of a Refusal to Grant the Present Request

59. If the provisional measures requested are not ordered, TOML's rights will remain exposed to ongoing and irreversible prejudice during the pendency of these proceedings. The harm identified above would not merely persist but will likely intensify through further acts and omissions of the Authority.

60. In particular, TOML expects that the Authority will likely continue—and potentially conclude—the LTC's inquiry in its present, procedurally defective form, and to adopt, circulate, or act upon its findings or recommendations based on a procedurally flawed inquiry. Such steps would not only deepen the prejudice already caused to TOML but could fundamentally alter the legal and factual framework within which the dispute falls to be decided. Once taken, these actions cannot be undone, and risk depriving any subsequent decision made by the Chamber on the merits of any practical utility or effect.

61. In these circumstances, a refusal to grant provisional measures would undermine the very purpose of Article 290 of UNCLOS, which is to preserve the respective rights of the parties pending the final decision. Without interim protection, TOML's rights would be exposed to harm that no later remedy could adequately repair, rendering the eventual judgment of the Chamber largely ineffective.

62. The continuation of the inquiry would also risk aggravating and extending the dispute. The Tribunal has repeatedly recognized "*the obligation of the parties not to aggravate the dispute pending its settlement* [and] *the obligation not to create an irremediable situation*". [27] Each additional step taken by the Authority in furtherance of the inquiry—particularly the adoption or endorsement of adverse findings—would generate new points of contention between the Parties and entrench their positions. This will likely complicate the proceedings before the Chamber and diminish the prospects for a coherent and orderly resolution on the merits. This risk is particularly acute where the Authority has deferred engagement with TOML's requests for procedural clarification while allowing the inquiry to proceed.

63. By contrast, the prescription of provisional measures would stabilize the dispute between the Parties by preventing further contested acts and omissions, preserving the status quo, and safeguarding the integrity of the proceedings. It would ensure that the Chamber retains the ability to render a decision that is fully effective in practice, in accordance with the object and purpose of UNCLOS.

[27] Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10 at p. 25, para. 90. See also "Enrica Lexie" (Italy v. India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015, p. 182, at p. 204, paras. 131, 141(1); Detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures, Order of 25 May 2019, ITLOS Reports 2018-2019, p. 283 at p. 311 at para. 124(c); M/T "San Padre Pio" (Switzerland v. Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018-2019, p. 375, at p. 410, para. 146(2).

CHAPTER 5
JUDGE AD HOC

64. TOML reserves the right to choose a judge ad hoc to act as a member of the Chamber pursuant to Article 17 of the Statute of the Tribunal.

CHAPTER 6
SUBMISSIONS

65. For the reasons set out above, TOML requests that the Tribunal prescribe the following provisional measures:

(a) Order the Authority to immediately suspend the inquiry regarding the alleged "possible non-compliance" of TOML with its contractual obligations, pending the final decision of the Chamber;

(b) Order the Authority to refrain from taking, authorizing, or permitting any further steps or measures in connection with that inquiry pending the final decision of the Chamber;

(c) Order the Authority to ensure that no recommendations, findings, reports, or other outputs arising from the LTC's inquiry are adopted, issued, published, communicated, or otherwise relied upon pending the final decision of the Chamber;

(d) Pending the final decision of the Chamber, prohibit the Authority from taking any action that might aggravate or extend the dispute, or prejudice the execution of any decision the Chamber may render; and

(e) Order such other provisional measures as the Chamber considers necessary to preserve TOML's rights and to ensure the effectiveness of its eventual decision.

Sydney,

30 May 2026

Respectfully submitted,

