SEABED DISPUTES CHAMBER OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Year 2026

18 July 2026

<u>List of Cases:</u>
No. 35

CASE CONCERNING AN INQUIRY BY THE INTERNATIONAL SEABED AUTHORITY

(TONGA OFFSHORE MINING LTD. *v.* INTERNATIONAL SEABED AUTHORITY)

Request for the prescription of provisional measures

ORDER

Present: *President* ATTARD; *Judges* JESUS, KULYK, KITTICHAISAREE, KOLODKIN, LIJNZAAD, DUAN, BROWN, CARACCIOLO, ARMAS PFIRTER, JOYINI; *Registrar* HINRICHS OYARCE.

THE SEABED DISPUTES CHAMBER,

composed as above,

after deliberation,

Having regard to articles 187, subparagraph (c), and 290, paragraph 1, of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”) and articles 25, 37 and 40, paragraph 1, of the Statute of the Tribunal (hereinafter “the Statute”),

Having regard to articles 89, 90 and 115 of the Rules of the Tribunal (hereinafter “the Rules”),

Having regard to the application submitted to the Seabed Disputes Chamber (hereinafter “the Chamber”) by Tonga Offshore Mining Ltd. (hereinafter “TOML”) instituting proceedings against the International Seabed Authority (hereinafter “the Authority”) in a dispute regarding an inquiry by the Authority,

Having regard to the request submitted by TOML to the Chamber on 5 June 2026 for the prescription of provisional measures by the Chamber pursuant to article 290, paragraph 1, of the Convention,

Makes the following Order:

1. By an application dated 30 May 2026 and filed with the Registry of the Tribunal on 5 June 2026, TOML instituted proceedings against the Authority in a dispute regarding an inquiry by the Authority (hereinafter “the Application”). The case was entered in the List of cases as Case No. 35 and named *Case concerning an inquiry by the International Seabed Authority (Tonga Offshore Mining Ltd.* v. *International Seabed Authority)*.

2. In the Application, TOML stated that it had appointed Mr Nathan Eastwood as its Agent. In a notarized power of attorney dated 3 June 2026, received in the Registry on 5 June 2026, Mr Corey McLachlan, authorized director of TOML, appointed Mr Eastwood as Agent with full powers to represent TOML in the case.

3. Together with the Application, TOML submitted to the Chamber a Request for the prescription of provisional measures (hereinafter “the Request”) under article 290, paragraph 1, of the Convention.

4. By letter dated 30 May 2026, filed with the Registry on 5 June 2026, the Agent of TOML requested the "coordinated treatment" by the Chamber of the proceedings in the present case and in the *Case concerning an inquiry by the International Seabed Authority (Nauru Ocean Resources Inc.* v. *International Seabed Authority)*. In the same letter, the Agent of TOML also requested that "the Chamber consider whether it would be appropriate to issue, at an early stage, a procedural direction reminding the parties of their well-established obligation not to aggravate or extend the dispute pending its resolution."

5. By letter dated 5 June 2026, the Registrar transmitted electronic copies of the Application, the Request and the letter dated 30 May 2026 to the Secretary-General of the Authority (hereinafter "the Secretary-General").

6. In accordance with article 190, paragraph 1, of the Convention, by note verbale dated 5 June 2026, the Registrar notified the Kingdom of Tonga (hereinafter "Tonga"), as the sponsoring State of TOML, of the Application and the Request.

7. 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, the Registrar notified the Secretary-General of the United Nations of the Application and the Request by letter dated 5 June 2026.

8. In accordance with article 24, paragraph 3, of the Statute, the Registrar notified the States Parties to the Convention of the Application and the Request by a note verbale dated 8 June 2026.

9. By letter dated 8 June 2026, the Secretary-General notified the Chamber of the appointment of Mr Steven Dietrich, Senior Legal Officer and Deputy Legal Counsel of the Authority, as Agent for the Authority.

10. On 9 June 2026, pursuant to articles 45, 73 and 115 of the Rules, the President of the Chamber held consultations by videoconference with the Agents of the Parties to ascertain the views of the Parties with regard to questions of procedure. During the consultations, it was agreed by the Agents of the Parties that

the Authority would file a single statement in response addressing the Request in the present case and the request for the prescription of provisional measures in the *Case concerning an inquiry by the International Seabed Authority (Nauru Ocean Resources Inc.* v. *International Seabed Authority)*. It was further agreed that the Chamber would hold a joint hearing with respect to the requests for the prescription of provisional measures in these two cases.

11. Certified paper copies of the Application and the Request and annexes were transmitted to the Authority on 10 June 2026.

12. By Order dated 10 June 2026, the President of the Chamber, pursuant to articles 25, 27 and 40, paragraph 1, of the Statute and articles 45, 90, paragraph 2, and 115 of the Rules, fixed 2 July 2026 as the date for the opening of the hearing. The Order was communicated to the Parties on the same date.

13. On 25 June 2026, the Authority filed its Statement in Response, a copy of which was transmitted electronically to the Agent of TOML on the same date. A single statement in response was filed (see para. 10 above).

14. By letter dated 25 June 2026 addressed to the Agents of the Parties, the Registrar referred to three letters exchanged between the Parties and copied to the Registry, namely a letter dated 19 June 2026 from TOML to the Authority, a letter dated 22 June 2026 from the Authority to TOML and a further letter dated 23 June 2026 from TOML to the Authority. In her letter, the Registrar stated that, having ascertained the views of the Parties, she would include the three letters in the case file.

15. By letter dated 27 June 2026, received in the Registry on 29 June 2026, the Agent of TOML requested the President of the Chamber to “issue a procedural direction under Article 90(4) of the Rules, calling upon the parties to ‘act in such a way as will enable any order the Tribunal may make on the request for provisional measures to have its appropriate effects’.” A copy of the letter was transmitted to the Agent of the Authority on 29 June 2026.

16. On 29 June 2026, the President of the Chamber addressed a letter to both Parties, in which he stated the following:

> In light of the circumstances of the case and with a view to preventing an aggravation of the dispute, I consider it appropriate, in conformity with articles 90, paragraph 4, and 115 of the Rules, to call upon all Parties to avoid taking any measures which might hinder any orders the Chamber may make on the Requests for provisional measures to have their appropriate effects.

17. By letter dated 29 June 2026, received in the Registry on 30 June 2026, the Agent of the Authority stated that, "[i]n light of the extremely broad and far-reaching terms of the President's Article 90(4) Measure, and out of an abundance of caution", the Legal and Technical Commission of the Authority (hereinafter "the LTC" or "the Commission") had been advised "to suspend consideration of matters raised in the Applicants' letters of 21 and 22 April 2026". The Agent invited the President of the Chamber "to revisit the measure adopted under Article 90(4) of the Rules". A copy of the letter was transmitted to the Agent of TOML on 30 June 2026.

18. By letter dated 30 June 2026, the Agent of TOML invited the President of the Chamber to reject the request of the Authority. A copy of the letter was transmitted to the Agent of the Authority on the same date.

19. By letters dated 1 July 2026, the Registrar, at the request of the President of the Chamber, informed the Parties that the matter raised in their letters (see paras. 17 and 18 above) had been brought to the attention of the Chamber and that "[t]here was consensus among the Members of the Chamber in favour of the action taken by the President of the Chamber under article 90, paragraph 4, of the Rules".

20. On 1 July 2026, TOML and the Authority each submitted the information required under paragraph 12 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

21. In accordance with articles 68 and 115 of the Rules, the Chamber held initial deliberations on 1 July 2026 concerning the written pleadings and the conduct of the case.

22. On the same date, in accordance with articles 45 and 115 of the Rules, the President of the Chamber held consultations with the Agents of the Parties with regard to questions of procedure.

23. Pursuant to articles 67, paragraph 2, and 115 of the Rules, copies of the Statement in Response of the Authority and the annexes thereto were made accessible to the public upon the opening of the oral proceedings.

24. On 2 and 3 July 2026, as agreed between the Parties (see para. 10 above), the Chamber held joint hearings in the present case and the *Case concerning an inquiry by the International Seabed Authority (Nauru Ocean Resources Inc.* v. *International Seabed Authority)*. At those hearings, oral statements were presented by the following:

On behalf of TOML:	Mr Nathan Eastwood, Watson Farley & Williams,
	as Agent, Counsel and Advocate,
	Mr Samuel Wordsworth KC, Essex Court Chambers,
	Ms Amy Sander KC, Essex Court Chambers,
	Mr Sean Aughey, Essex Court Chambers,
	as Counsel and Advocates;
On behalf of the Authority:	Mr Steven Dietrich, Legal Counsel and Director of the Office of Legal Affairs,
	as Agent,
	Mr Philippe Sands KC, Professor of International Law, University College London, Barrister, 11 KBW, London, United Kingdom,
	Mr Remi Reichhold, Barrister, 11 KBW, London, United Kingdom,
	Ms Lucy Jones, Barrister, 11 KBW, London, United Kingdom,
	as Counsel and Advocates.

25. During the course of the oral proceedings, a number of exhibits, including extracts from documents, were displayed by the Parties on video monitors.

* *

26. In paragraph 54 of the Application, TOML requests the Chamber to adjudge, declare and order:

(a) the Authority's identification of TOML as a contractor "*requiring specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the area, including obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement*" in the Authority's letter to TOML dated 16 March 2026 was taken without lawful procedural basis and in breach of due process;

(b) the Authority has breached Council Decision ISBA/31/C/18 by failing to afford TOML due process, transparency and fairness at every stage of the conduct of its inquiry, including by providing TOML with the right to respond;

(c) the Authority's identification and inquiry of TOML as a contractor requiring "*specific attention to potential non-compliance*" as set out in its letter to TOML dated 16 March 2026 is in breach of the LTC's criteria and methodology for identifying contractors at risk of non-compliance set out in ISBA/29/LTC/5;

(d) in respect of the LTC's report ISBA/31/C/4/Add.1, the Authority shall ensure that no reliance is placed on the relevant portions of the report in assessing TOML unless and until the procedural requirements of due process, transparency and fairness have been satisfied;

(e) the Authority shall not rely on or give effect to its letter to TOML dated 16 March 2026 unless and until the procedural requirements of due process, transparency and fairness have been satisfied;

(f) the Authority shall ensure that no further step identifying TOML as requiring "*specific attention to possible non-compliance*" is taken unless and until the Authority has:

i. notified TOML of the proposed step and its basis;

ii. provided TOML with a full and complete response to the requests set out in TOML's letter dated 21 April 2026, including the factual and legal basis of the inquiry, the applicable criteria and methodology, and the materials relied upon; and

iii. afforded TOML a meaningful opportunity to respond to the proposed step in accordance with the requirements of due process, transparency and fairness;

(g) the Authority shall refrain, including through the LTC, from transmitting to the Council, or otherwise acting upon, any finding, assessment or recommendation arising from the inquiry in respect of TOML unless and until the Authority has:

i. provided TOML with the factual and legal basis of the inquiry, the applicable criteria and methodology, and the materials on which the inquiry is based; and

ii. afforded TOML due process, transparency and fairness at every stage of the inquiry in accordance with Council Decision ISBA/31/C/18, including a meaningful opportunity to respond;

(h) the Authority, in conducting the inquiry and in its engagement with TOML, has breached its obligation to fulfil in good faith its powers and functions under section 13.4 of the Exploration Contract;

(i) the Authority shall bear TOML's costs of these proceedings; and

(j) any other and further relief as the Chamber deems to be just and proper.

27. In paragraph 65 of the Request, TOML requests the Chamber to 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.

28. At the public sitting held on 3 July 2026, the Agent of TOML made the following final submissions:

TOML requests that the Chamber prescribe the following provisional measures:

(1) 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;

(2) 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;

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

(4) 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

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

29. In paragraph 97 of its Statement in Response, the Authority requests the Chamber:

a. to reject all of the requests made by NORI and TOML for the prescription of provisional measures; and
b. to order NORI and TOML to bear, in equal share, the Authority's costs of responding to their requests for the prescription of provisional measures and attending the hearings in Hamburg on 2 and 3 July 2026.

30. At the public sitting held on 3 July 2026, the Agent of the Authority made the following final submissions:

For reasons set out in the Authority's Statement in Response of 25 June 2026 and elaborated upon at the hearings in Hamburg on 2 and 3 July 2026, the Authority respectfully requests the Seabed Disputes Chamber:
(1) to reject all the requests made by NORI and TOML for the prescription of provisional measures;
(2) to withdraw the direction made by the President of the Chamber pursuant to article 90(4) of the Tribunal's Rules, before 9 a.m. (Kingston, Jamaica time) Monday, 6 July 2026; and
(3) to order NORI and TOML to bear in equal share the Authority's costs of responding to their requests for the prescription of provisional measures and attending these hearings in Hamburg on 2 and 3 July 2026.

31. By letters dated 6 July 2026, the Registrar, on the instruction of the President of the Chamber, communicated to the Parties the following:

The Chamber has taken note of the submissions made by the Parties during the hearing concerning the call addressed by the President of the Chamber to the Parties on 29 June 2026, pursuant to articles 90, paragraph 4, and 115 of the Rules of the Tribunal, and the undertakings made by the Authority.

The Chamber considers that this call remains in effect pending the adoption of its decision on the Requests for the prescription of provisional measures.

32. By letter dated 7 July 2026, the Agent of TOML requested, in paragraph 9 thereof, that "[t]he Chamber urgently confirm that it shares the Applicants' understanding" concerning "its existing direction under Article 90, paragraph 4 of the Rules". Failing such confirmation, the Agent of TOML also requested a "further relief" from the Chamber. In his letter, the Agent of TOML also noted that the Parties were engaged in ongoing "constructive discussions with a view to resolving the issues raised in this letter by agreement". A copy of the letter was transmitted to the Agent of the Authority on the same date.

33. By letter of 7 July 2026, received in the Registry on 8 July 2026, the Agent of the Authority stated that "there is no need for the Chamber to provide any 'urgent confirmation', or any 'further relief', as sought in the Applicants' letter dated 7 July 2026." A copy of the letter was transmitted to the Agent of TOML on the same date.

34. By message of 8 July 2026, the Agent of TOML stated that

> the Applicants confirm that they no longer require the Chamber's consideration and determination of the matters set out in the 7 July letter. The Applicants hereby withdraw their requests to the Chamber set out in paragraph 9 of the letter.

* * *

35. The factual background, as presented by the Parties, can be summarized as follows. TOML is "a company duly incorporated under the laws of the Kingdom of Tonga … and a contractor sponsored by Tonga within the meaning of Part XI and Annex III thereto". Tonga acceded to the Convention on 2 August 1995. On the same date, it became a Party to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (hereinafter "the 1994 Agreement"). A contract for exploration for polymetallic nodules between TOML and the Authority was concluded on 11 January 2012 for a period of 15 years (hereinafter "the Exploration Contract").

36. In a decision of the Council of the Authority (hereinafter "the Council") dated 21 July 2025 (doc. ISBA/30/C/19) (hereinafter "the 2025 Council Decision"), the Council requested the Secretary-General to require, "in accordance with section 10.3 of the standard clauses for exploration contracts, additional information from contractors at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses" and to forward this information to the LTC for its consideration. The Council further requested the LTC "to report and make appropriate recommendations to the Council during the first part of its thirty-first session on the outcome of the inquiry", and

> to pay specific attention to possible non-compliance of contractors with the obligation that they, their employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of their operations under their exploration contracts shall observe the applicable law, in particular where such possible non-compliance may arise out of direct or indirect actions related to activities in the Area, including contractual obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement (doc. ISBA/30/C/19, paras. 9-10).

37. By circular dated 15 January 2026, the Secretary-General, referring to the 2025 Council Decision, requested all contractors of the Authority to provide information specified in that circular by 10 February 2026. As of 13 February 2026, all 21 contractors, including TOML, had responded by providing the information requested and indicated that there were "no incidents, activities or events that might place them at risk of non-compliance with their contractual obligations" (doc. ISBA/31/C/4/Add.1, para. 3). In addition, in its response dated 9 February 2026, TOML expressed the view that, under the Convention, the Secretary-General "is not empowered to assume an active supervisory or monitoring role". It further stated that, "in purporting to delegate to the Secretary-General powers to conduct inquiries into Contractors' compliance with their contractual obligations, the Council's Decision is unlawful and that the Circular is ultra vires to the powers granted to the Secretary-General under [the Convention]."

38. During the first part of its thirty-first session held from 23 February to 6 March 2026, the LTC reported, with regard to the implementation of the 2025 Council Decision, that it intended to request additional information from two contractors that it

had identified as “requiring specific attention for possible non-compliance” (doc. ISBA/31/C/4/Add.1, para. 8). On 19 March 2026, the Council took note of the LTC’s “identification of contractors requiring specific attention under section 27 of the standard clauses and its ongoing requests for additional information” and indicated that it expected a report from the LTC on that issue during the second part of the thirty-first session (doc. ISBA/31/C/18, para. 3) (hereinafter “the 2026 Council Decision”). The Council also requested the LTC, “in taking the matter forward … [t]o continue 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” (*ibid.*, para. 4).

39. By letter dated 16 March 2026, the Secretary-General informed TOML that the LTC, “in the context of its ongoing assessment of the performance of contractors as stipulated in ISBA/29/LTC/5” and “in line with the request formulated in paragraph 10 of Council Decision ISBA/30/C/19”, requested additional information from TOML to be provided “no later than 31 May 2026”. In a document annexed to the letter of the Secretary-General entitled “Additional Questions to Contractor”, the following is stated:

> As per paragraph 10 of ISBA/30/C/19, the Contractor has been identified as requiring specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the Area, including obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement. In the light of this paragraph 10, the Commission wishes to ask additional information to the Contractor on the following issues:
>
> i. Has TOML directly or indirectly undertaken or plans to undertake any activity which may contribute to the appropriation of any part of the Area or its resources outside the multilateral legal framework of UNCLOS?
> ii. Has TOML undertaken or plans to undertake any activity in any manner whatsoever contrary to or inconsistent with its exclusive rights in the area of its exploration contract?
> iii. In light of the two previous questions, can TOML specify whether such activities may have included or will include, inter alia, sharing data or other information appertaining to its exploration work pursuant to its contract with the Authority to any entity or person outside the framework of such contract?

40. On 22 April 2026, TOML wrote to the LTC to “seek confirmation of the procedure that the Commission intends to follow” and to “request further clarification

and particulars in respect of the questions raised and their legal bases, so that TOML may provide a complete and informed substantive response" to the questions of the LTC of 16 March 2026. The Chair of the LTC responded by letter dated 13 May 2026, in which she recalled that the LTC was not in session at the time and that its work "is conducted on a collective and consensus-based basis". The Chair further stated that

> it would neither be procedurally appropriate nor feasible for [her], in [her] capacity as Chair, to express any position on the matters raised in [TOML's] correspondence prior to the Commission having had a full and proper opportunity to consider, deliberate upon, and determine its position collectively.

41. By letter dated 18 May 2026 and addressed to the Secretary-General, TOML gave "formal notice that a dispute ha[d] arisen" between itself and the Authority "within the meaning of Part XI, Section 5" of the Convention, "including Article 187(c)(i) and (ii)". In that letter, TOML set out its legal position and "invite[d] the Authority to exchange views concerning the subject matter of the dispute and the means by which it may be resolved".

42. The Chamber notes that the Parties have used different nomenclature with respect to some of the above-mentioned documents issued by the Authority, in particular the "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 (doc. ISBA/29/LTC/5), which TOML refers to as the "2024 Procedure" and the Authority as the "Inadequate Performance Procedure". The Chamber will refer to this document as the "LTC doc. ISBA/29/LTC/5".

I. Part XI of the Convention

43. The present proceedings are of historic significance. They constitute the first contentious cases submitted to the Seabed Disputes Chamber under Part XI of the Convention. The Chamber is therefore called upon, for the first time, to exercise its contentious jurisdiction concerning activities in the Area.

44. The unique legal framework established by Part XI, the relevant annexes to the Convention and the 1994 Agreement, is implemented through complementary institutional functions. While the Authority is entrusted with organizing and controlling activities in the Area on behalf of humankind as a whole, the Chamber is entrusted, through its advisory and contentious jurisdiction, with the function of interpreting and applying the provisions governing activities in the Area.

45. The Chamber is an integral component of the institutional structure established by Part XI. Within that structure, the Authority and the Chamber perform distinct yet complementary functions, each acting within the limits of the powers conferred upon them by the Convention. The effectiveness, coherence and integrity of the regime established by Part XI depend upon the proper observance of that foundational balance, which provides that all parties involved in activities in the Area are entitled to make use of their right to access the Chamber.

46. In exercising its power to prescribe provisional measures, the Chamber acts as an independent and impartial judicial body. The prescription of provisional measures is without prejudice to the Chamber's final determination concerning its jurisdiction, the admissibility of the claims or the merits of the dispute.

47. The Chamber is mindful that the exercise of its power to prescribe provisional measures serves not only the interests of the parties to the proceedings but also the broader objective of ensuring the proper administration of justice in matters concerning activities in the Area, and the effective implementation of the common heritage of humankind regime established under Part XI of the Convention.

48. The Parties expressly refer to the common heritage of humankind pursuant to Part XI of the Convention. The Authority maintains that, as recently emphasized by its Secretary-General, the threats of unilateral activities in the Area

> "undermine the mandate of the Authority and the principles that have guided our work for over thirty years" through negotiation and consensus. The role of this Chamber is vital in navigating these stormy waters, and in safeguarding the multilateral legal framework.

According to TOML, it was “the first commercial entity to secure an exploration contract” and “[t]he first to be sponsored by a developing State, turning Arvid Pardo’s vision into a reality”.

49. The Chamber considers that the principle of common heritage determines the legal status of the Area and its resources and informs the interpretation and application of all the provisions governing activities in the Area. As stated by the Chamber in its 2011 Advisory Opinion, the Authority acts on behalf of humankind in the administration of those rights (*Responsibilities and obligations of States with respect to activities in the Area*, *Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 33, para. 76). By precluding amendments to the basic principle contained in article 136 of the Convention, and amendments derogating from that principle, in particular article 311, paragraph 6, confirms the foundational character of the common heritage principle within the legal regime governing the Area.

50. The Chamber notes that a contractor of the Authority acquires no independent legal title to the resources of the Area. It is authorized to undertake only those activities expressly permitted by the Convention, the applicable rules, regulations and procedures of the Authority, and the terms and conditions of its contract. The contractor’s authority to explore or exploit the resources of the Area is therefore derivative of, and inseparable from, the unique framework established by Part XI, the relevant annexes to the Convention and the 1994 Agreement.

51. It is against that regime and institutional background that the Chamber proceeds to examine whether the conditions governing the exercise of its jurisdiction under article 290, paragraph 1, of the Convention are satisfied.

II. *Prima facie* jurisdiction

52. The Chamber must, at the outset, examine the question whether it has *prima facie* jurisdiction over the dispute. The requirements to be satisfied in order to

establish the jurisdiction of the Chamber are set out in article 290, paragraph 1, of the Convention and article 187, subparagraph (c), of the Convention.

53. Article 290, paragraph 1, of the Convention reads:

> 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.

54. Article 187, subparagraph (c), of the Convention reads:

> The Seabed Dispute Chamber shall have jurisdiction under this Part and the Annexes relating thereto in disputes with respect to activities in the Area falling within the following categories:
> …
> (c) 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:
> > (i) the interpretation or application of a relevant contract or a plan of work; or
> > (ii) 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;

55. As the Tribunal has previously stated, the Chamber need not finally satisfy itself that it has jurisdiction on the merits of the case and yet it may not prescribe provisional measures unless the provisions invoked by the applicant appear *prima facie* to afford a basis on which the jurisdiction of the Chamber might be founded (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24, at p. 37, para. 29; see also *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at pp. 65 and 69, paras. 39 and 69; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015*, p. 146, at p. 155, para. 34; *"Zheng He" (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024, ITLOS Reports 2024*, p. 205, at p. 220, para. 57).

56. Article 37 of the Statute reads:

> The Chamber shall be open to the States Parties, the Authority and their entities referred to in Part XI, Section 5.

57. Article 153, paragraph 2(b), of the Convention reads:

> 2. Activities in the Area shall be carried out as prescribed in paragraph 3:
> …
> (b) In association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.

58. TOML is a juridical person within the meaning of article 153, paragraph 2(b), of the Convention. TOML is a "company duly incorporated under the laws of the Kingdom of Tonga" and it is a contractor sponsored by Tonga, a State Party to the Convention. Tonga deposited its instrument of accession on 2 August 1995. On the same date, Tonga became also a Party to the 1994 Agreement.

59. TOML is a party to a contract for exploration of polymetallic nodules with the Authority, concluded on 11 January 2012. The contract will expire on 11 January 2027.

* * *

60. The Chamber is satisfied that the requirements for access to it by the Parties in accordance with the Convention are met.

Existence of a dispute

61. The Chamber must determine whether, on the date of the institution of these proceedings, a dispute appears to have existed between the Parties.

62. The Chamber recalls that a dispute is a "disagreement on a point of law or fact, a conflict of legal views or of interests" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11), and "[i]t must be shown that

the claim of one party is positively opposed by the other" (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328) (see *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280, at p. 293, para. 44; *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 65, para. 85; *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020-2021*, p. 17, at pp. 106-107, para. 323).

63. The Parties differ as to whether the inquiry concerning the Applicant is conducted within the procedure established by LTC doc. ISBA/29/LTC/5 or pursuant to a distinct procedure under paragraphs 9 and 10 of the 2025 Council Decision.

64. TOML states that 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.

65. TOML submits that a dispute had arisen between the Parties by 18 May 2026 or, at the latest, by 26 May 2026. It further submits that "[t]he dispute included disagreement over what due process requires and whether the Authority was complying with those requirements at every stage of the inquiry".

66. TOML argues that "the crux of this dispute between the Parties concerns the applicable requirements of due process and whether the Authority has complied with those requirements", adding that the dispute between the Parties "is not as to whether the Applicants are in breach, or even potential breach, of their exploration contracts". It argues further that the dispute "concerns a critical antecedent issue, namely, what requirements of due process are applicable to the Authority's inquiry, including the steps taken so far, and whether those requirements have been complied with".

67. TOML contends that a proposal for consultations “does not negate or disprove” the existence of a dispute, adding that the preliminary nature of the finding of potential non-compliance “in no way disproves the existence of the dispute concerning due process, including whether due process was afforded at the preliminary stage of the inquiry resulting in that preliminary finding”.

68. The Authority maintains that “it is not even apparent … that any dispute exists between the Parties”, stating that TOML wants the Authority “to respect [its] due process rights in the inquiry, and the Authority has confirmed that it will fully respect those due process rights”.

69. According to the Authority, “the end point of this inquiry is a long way off”, adding that “[n]o facts have been established, no recommendations have been made, and no decisions have been taken”. It submits that it is “premature and hypothetical for anyone to address the Chamber on the serious consequences or penalties, because nothing has been decided”.

* * *

70. The Chamber is of the view that the Parties disagree as to whether due process has been observed. While TOML submits that the dispute included disagreement over what due process requires and whether the Authority was complying with those requirements at every stage of the inquiry, the Authority states that TOML “want[s] the Authority to respect [its] due process rights in the inquiry, and the Authority has confirmed that it will fully respect those due process rights”.

71. In the view of the Chamber, on the date of the institution of these proceedings, a dispute between the Parties appears *prima facie* to have existed over the question of observance of due process by the Authority in its inquiry concerning TOML’s possible non-compliance with its contractual obligations.

A dispute with respect to activities in the Area

72. TOML's position is that "the Chamber clearly has jurisdiction over the present dispute under article 187, paragraph (c) of UNCLOS", adding that "[t]he 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".

73. TOML maintains that the dispute concerns the acts and omissions of the Authority relating to activities in the Area "that are directed at TOML and directly affect its legitimate interests within the meaning of Article 187(c)(ii)" and "the interpretation and application of the Exploration Contract within the meaning of Article 187(c)(i), in particular, the Authority's obligation under section 13.4 of the Exploration Contract to fulfil in good faith its powers and functions under the Convention and the 1994 Agreement … which is directly engaged by the conduct at issue in this Application".

74. TOML maintains further that "[t]his contractual aspect of the dispute arises from the same acts and omissions of the Authority that are disputed under article 187(c)(ii)". It submits that the Authority has "failed to exercise its functions in good faith in accordance with th[e] obligation" under section 13.4 of the Exploration Contract.

75. According to TOML, the Authority's obligation to afford fundamental due process throughout its inquiry is an element of its obligation under section 13.4 of the Exploration Contract. It argues that "[i]t is not necessary for [TOML] to allege bad faith", adding that "the Chamber is not being invited to make a finding of bad faith".

76. Regarding article 187, subparagraph (c)(ii), of the Convention, 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*'."

77. TOML argues that this inquiry concerns the 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".

78. The Authority on the other hand contends that "the requirements of Article 187(c)(i) and (ii) do not afford a *prima facie* basis on which the jurisdiction of the [Chamber] might be founded."

79. The Authority maintains that article 187(c)(i) of the Convention provides jurisdiction over disputes concerning the interpretation of a relevant contract or a plan of work. It further maintains that "there is no dispute under the relevant contracts".

80. Concerning article 187(c)(ii) of the Convention, the Authority argues that TOML's complaints of an alleged "procedurally defective inquiry" are not claims relating to activities in the Area, but rather they "relate to the Authority's exercise of its compliance powers … including … the Authority's discretionary powers".

81. The Authority further argues that article 187, subparagraph (c)(ii), of the Convention is limited to providing jurisdiction over disputes concerning "activities in the Area", a term defined in article 1, paragraph 3, of the Convention as "all activities of exploration for and exploitation of the resources, of the Area". It adds that "the Applicants' compliance complaints do not address '*activities*' as defined in the Convention". The Authority argues that they relate rather to the Authority's discretionary powers under article 153 of the Convention and those of the Council pursuant to article 162 of the Convention. It concludes that "[t]his does not fall within the remit of article 187(c)(ii)".

* * *

82. The Chamber is of the view that the issue of observance of due process in the carrying out by the Authority of an inquiry concerning possible non-compliance of TOML's contractual obligations is a relevant consideration to be taken into account in

the proper implementation of the contractual obligations related to the activities in the Area. Activities in the Area entail substantive as well as procedural rights for the contractor. One such procedural right is the right to due process that must be observed in any inquiry concerning TOML's possible non-compliance with its contractual obligations.

83. As the Council itself has stated in the 2026 Council Decision, due process should be observed at all stages of the inquiry. While the Authority, in the exercise of its functions, has the discretionary power to take measures, including the carrying out of inquiries, concerning possible non-compliance of TOML's contractual obligations, it must, at the same time, ensure that its own directives on due process are implemented at every stage of the inquiry.

* * *

84. The Chamber notes that the Applicant has invoked two provisions of the Convention as affording a basis on which, *prima facie*, the Chamber's jurisdiction over the dispute submitted to it might be founded. The Chamber considers that, at this stage of the proceedings, it needs only to satisfy itself that at least one of those provisions appears *prima facie* to afford such a basis. The Chamber in this respect considers that article 187, subparagraph (c), of the Convention appears *prima facie* to afford a basis on which its jurisdiction might be founded. The Chamber therefore concludes that it has, *prima facie*, jurisdiction over the dispute.

Article 283 of the Convention

85. The Chamber will now proceed to determine whether the requirements under article 283 of the Convention, relating to an exchange of views, have been met. These requirements are relevant in the present proceedings, pursuant to article 186 of the Convention.

86. Article 283, paragraph 1, of the Convention reads:

> When a dispute arises between States Parties concerning the interpretation or application of the Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

87. TOML asserts that it "has sought to settle this dispute in accordance with the principles of good faith, procedural fairness, and the dispute settlement framework established under [the Convention]".

88. It notes that on 18 May 2026, it

> issued a Notice of Dispute to the Authority requesting consultations to take place within ten business days, i.e., by 29 May 2026, with a view to resolving the dispute in an expeditious and amicable manner prior to the deadline imposed by the LTC for TOML to respond.

89. TOML points out that, to date, "neither the LTC nor the Authority has substantively engaged with TOML in relation to the dispute".

90. The Authority maintains that its Secretary-General "has repeatedly offered to engage in consultations with the Applicants to address issues they have raised. They have refused to do so".

91. The Authority maintains further that the Secretary-General, in her letter dated 23 June 2026, invited the Applicants to consultations on 29 and 30 June 2026, adding that, "[o]f course, that consultation process cannot be done in parallel with this hearing".

* * *

92. The Chamber observes that in these proceedings the Parties to the dispute have attempted to exchange views.

93. The Chamber notes in this regard that the Tribunal has stated, on several occasions, that "the obligation to proceed expeditiously to an exchange of views, applies equally to both parties to the dispute" (*M/V "Norstar" (Panama* v. *Italy),*

Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, at p. 91, para. 213; *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. 304, para. 88; *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. 74; *"Zheng He" (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024, ITLOS Reports 2024*, p. 205, at p. 230, para. 98).

94. The Chamber wishes to recall that a party is not obliged to continue with an exchange of views when it concludes that the possibility of reaching an agreement has been exhausted (*MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95, at p. 107, para. 60; *"ARA Libertad" (Argentina* v. *Ghana), Provisional Measures, Order of 15 December 2012, ITLOS Reports 2012*, p. 332, at p. 345, para. 71; *"Arctic Sunrise" (Kingdom of the Netherlands* v. *Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013*, p. 230, at p. 247, para. 76; *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. 304, para. 87; *M/T "San Padre Pio" (Switzerland* v. *Nigeria), Provisional Measures, Order of 6 July 2019, ITLOS Reports 2018-2019*, p. 375, at pp. 392-393, para. 73; *"Zheng He" (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024, ITLOS Reports 2024*, p. 205, at p. 230, para. 98). The Chamber therefore concludes that *prima facie* the requirements of article 283 of the Convention are satisfied.

Article 189 of the Convention

95. The Chamber will now proceed to determine whether article 189 of the Convention appears to prevent the Chamber from asserting its *prima facie* jurisdiction in the present case.

96. Article 189 of the Convention reads:

Limitation on jurisdiction
with regard to decisions of the Authority

> The Seabed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Authority of its discretionary powers in accordance with this Part; in no case shall it substitute its discretion for that of the Authority. Without prejudice to article 191, in exercising its jurisdiction pursuant to article 187, the Seabed Disputes Chamber shall not pronounce itself on the question of whether any rules, regulations and procedures of the Authority are in conformity with this Convention, nor declare invalid any such rules, regulations and procedures. Its jurisdiction in this regard shall be confined to deciding claims that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under this Convention, claims concerning excess of jurisdiction or misuse of power, and to claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under this Convention.

97. The Parties disagree as to the applicability of article 189 of the Convention. In this respect, the contrast in their positions concerns whether the actions and the decisions of the Authority which are under scrutiny in this case are an exercise of its discretionary powers. The positions of the Parties also differ on whether the Chamber is requested to pronounce itself on the conformity with the Convention of any relevant procedure of the Authority or declare any such procedure invalid. These issues were addressed by the Parties in their pleadings. If the dispute were about the exercise by the Authority of its discretionary powers in accordance with Part XI of the Convention, article 189 would be engaged, thereby excluding the jurisdiction of the Chamber.

98. According to TOML, the procedure concerning paragraphs 9 and 10 of the 2025 Council Decision does not raise any issue regarding the exercise of discretionary powers by the Authority. In this context, TOML acknowledges that the Authority has certain discretionary powers under article 153 of the Convention, the 2025 Council Decision and Section 10.3 of the Exploration Contract. TOML recognizes that article 153, paragraph 5, of the Convention confers discretion on the Authority to take any measures to ensure compliance. It considers also that the 2025 Council Decision and Section 10.3 of the Exploration Contract, taken together, give the Authority “a discretionary power to request information and to identify a contractor as requiring specific attention as to possible non-compliance.”

99. However, according to TOML, the present dispute does not concern the exercise of the discretionary powers by the Authority either under article 153, paragraph 5, of the Convention or the 2025 Council Decision and Section 10.3 of the Exploration Contract. Nor does TOML seek to substitute the Chamber's discretion for that of the Authority.

100. In relation to article 153, paragraph 5, of the Convention, TOML maintains that the Chamber is not called upon to assess "what measures the Authority should or should not have taken in the exercise of that discretion" nor "to scrutinize the merits of the Respondent's findings with respect to compliance". On the contrary, TOML asserts that "[t]o resolve this dispute, the Chamber need only adjudicate on the lawfulness of the *process* adopted by the Respondent."

101. Referring to the 2025 Council Decision and Section 10.3 of the Contract, in TOML's view, the Chamber is not required "to scrutinize or second-guess the merits" of the decision of the Authority to exercise its discretionary powers. Rather, the dispute centers on the applicability by the Authority of due process and the requirements to comply with due process when it exercises its compliance powers. In this respect, the Authority "has no discretion to disapply or disregard these fundamental principles" of due process, transparency and fairness at every stage in the conduct of the inquiry. For the Applicant "the applicability of due process and the requirement to comply with due process are <u>not</u> matters of discretion for the Authority."

102. In the view of TOML, the Chamber is not even called upon to pronounce on the conformity of any relevant procedure of the Authority with the Convention or to declare any such procedure invalid. TOML contends that "the requirements of due process are not a 'procedure of the Authority' within the meaning of article 189" and that therefore "there is no impediment to the Chamber ruling on the applicable requirements of due process and whether these have been complied with". Moreover, TOML considers that

> even if the phrase "procedure of the Authority" does encompass due process requirements, the present claim concerns the application (or,

> rather, non-application) of that "procedure" in conflict with the Respondent's obligation to afford due process. That obligation arises both under the contract, including, as I have explained, as an element of the Respondent's obligation to act in good faith under section 13.4, and under the Convention. Accordingly, *prima facie*, an exception to the limitation on jurisdiction under article 189 applies.

103. Finally, TOML considers that the *travaux préparatoires* relating to article 189 of the Convention confirm its understanding of this provision, highlighting the concern of the drafters on the ability of the Chamber to exercise jurisdiction in disputes such as the present one, namely, a dispute concerning due process which is of a contractual and administrative nature.

104. Therefore, according to TOML, "there can be no doubt that this Chamber has *prima facie* jurisdiction over the present dispute."

105. The Authority states that the Convention confers upon it "a spectrum of discretionary powers". Some of them are defined in rather general terms, such as the power provided under article 153, paragraph 4, of the Convention to take at any time any measures provided for under Part XI to ensure compliance. Others, on the contrary, are more curtailed, "such as the section 10.3 contractual power, flowing from the Nodule Regulations and used by the Secretary-General to request additional information from contractors." The Authority also has "incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area" pursuant to Section 1.1 of the Annex to the 1994 Agreement.

106. Moreover, the Authority considers that

> [t]he language of Article 189 is clear, and it reflects the desire of the drafters of the Convention to ensure that the SDC is not engaged in micro-managing of the administration of this Part of the Convention. It follows that the SDC does not have jurisdiction to pronounce itself on the lawfulness of the procedure provided for under paragraphs 9 and 10 of the 2025 Council Decision – which concerns the exercise of discretionary powers – or on the lawfulness of the power under section 10.3 of the Applicants' contracts to request information, bearing in mind that this power stems directly from the standard clauses included within the Authority's Nodule Regulations.

107. The Authority claims that the role of the Chamber is characterized by "a

specific and narrowly prescribed function, as agreed by the drafters of the 1982 Convention.” In the view of the Authority, the drafters decided not to give the Chamber “the burden of micromanaging decisions to be taken by the Authority”, and they did not attribute to the Chamber “the role of substituting itself for the Authority’s exercise of discretionary powers.” According to the Authority, that is not a judicial function and article 189 is rather clear on this point. Article 189 reflects also an allocation of institutional competences between the Chamber and Authority. In the view of the Authority, “[t]he drafters of the Convention recognized that the Authority is best placed and best informed and most appropriately structured to make judgement calls on the appropriate exercise of compliance powers, certainly at the investigative phase.”

108. In this respect, the Authority argues that article 189 of the Convention establishes “crucial” limitations on the jurisdiction of the Chamber. In particular, this provision excludes the Chamber from having the “jurisdiction to opine on the Authority’s exercise of its discretionary powers, and the sending of questions to the Applicants was an exercise of discretionary power”. Further it is not for the Chamber “to substitute its discretion for that of the Authority”. Finally, the Chamber “has no jurisdiction to pronounce itself on the question of whether any rules, regulations and procedures of the Authority are in conformity with the Convention or, more broadly, invalid.”

109. In the view of the Authority, the preliminary and non-binding acts taken by the Authority thus far, aimed at gathering and assessing information, “fall squarely within these article 189 carve-outs.” In particular, the decision whether to ask questions of a contractor in relation to information envisaging a possible non-compliance with its contractual obligation is “by its very essence, a discretionary power.” The content of those questions is likewise left to the discretion of the Authority and “the expressions of discretionary power are to be found in the procedure that is outlined in paragraphs 9 and 10 of the 2025 Council Decision”.

110. Finally, the Authority, while recognizing that it is “not immune to judicial review by this Chamber, and that article 189 does not provide for a blanket exclusion of jurisdiction” finds that none of the exceptions contained in article 189 of the

Convention, applies in the present case.

* * *

111. The Chamber recalls that under article 189 of the Convention, its jurisdiction faces limitations. The Chamber's jurisdiction is precluded with regard to the exercise by the Authority of its own discretionary powers in accordance with Part XI and the Chamber is not entitled to substitute its discretion for that of the Authority.

112. The Chamber further recalls that article 189 of the Convention excludes its contentious jurisdiction in relation to the conformity with the Convention of the rules, regulations and procedures of the Authority or their validity. However, in this regard, the same provision recognizes the jurisdiction of the Chamber to decide certain categories of claims: claims "that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under this Convention"; claims concerning excess of jurisdiction or misuse of power; and claims "for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under this Convention."

113. The Chamber notes that the purpose of article 189 of the Convention is to balance two competing interests: on the one hand, the interest in preserving the Authority's discretionary powers, which are instrumental to organize, carry out, and control activities in the Area on behalf of humankind as a whole; and, on the other, the interest in ensuring judicial review to protect the rights and interests of entities involved in activities in the Area. To achieve this objective, article 189 establishes certain specific limits on the jurisdiction of the Chamber as set out in article 187.

114. The Chamber considers that article 189 of the Convention is to be read in conjunction with article 187 on the jurisdiction of the Chamber. This latter provision recognizes the jurisdiction of the Chamber over certain disputes, as identified in the provision, with respect to "activities" within the Area. Article 189, in turn, circumscribes the jurisdiction of the Chamber pursuant to article 187, shielding from

its judicial review the "discretionary powers" of the Authority and the conformity of the rules, regulations, and procedures of the Authority with the Convention or their validity. The Chamber considers that the terms "activities" and "discretionary powers" as well as the reference to the regulatory integrity granted to the Authority do not convey the same legal concepts.

115. In the present dispute, the Chamber shall not pronounce on the merits of the Authority's exercise of its discretionary powers in accordance with Part XI, much less act as a substitute for the Authority in the exercise of its discretion when evaluating possible instances of non-compliance.

116. The jurisdiction of the Chamber in these proceedings concerns the observance by the Authority of due process. Such observance, being required by the relevant legal framework, is extraneous to the exercise by the Authority of its discretionary powers.

117. In light of the foregoing, the Chamber finds that article 189 of the Convention does not preclude the assertion of its jurisdiction in these proceedings.

III. Plausibility of rights

118. The power of the Chamber to prescribe provisional measures under article 290, paragraph 1, of the Convention, in this case, has as its object the preservation of the respective rights claimed by the parties to the dispute, pending the Chamber's final decision. It follows that the Chamber is concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. However, the Chamber may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (*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; *"Enrica Lexie" (Italy* v. *India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015,* p. 182, at p. 197, para. 84; *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; *"Zheng He" (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024*, *ITLOS Reports 2024,* p. 205, at p. 232, para. 107).

119. The Chamber must therefore first determine whether in the circumstances of this case the rights TOML seeks to protect are plausible.

* * *

120. TOML asserts that, at this stage of the proceedings, "*[the Chamber] needs only to satisfy itself that the rights which [it] claim[s] and seek[s] to protect are at least plausible*." It is therefore "not required to furnish comprehensive, detailed evidence to establish its arguments in full." TOML further states that case law does not support the contention that there is a test on arguable or colourable breach to be satisfied at the provisional measures phase "because international courts and tribunals do not wish for hearings on provisional measures to turn into dress rehearsals for the merits."

121. In its Request, TOML asserts that the rights it seeks to protect in these proceedings are more than plausible. They

> 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 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.

122. TOML claims that its complaint with respect to the right to due process and fair treatment stems from a procedurally deficient non-compliance inquiry being conducted by the Authority that directly affects its legal and commercial interests. The procedural deficiencies listed include the manner in which TOML was identified through the report of the Commission to the Council (doc. ISBA/31/C/4/Add.1); the alleged lack of responsiveness to its inquiries concerning the procedure that the Commission intends to follow in implementing paragraphs 9 and 10 of the 2025 Council Decision; and the inattention to its requests for further clarification and particulars in respect of the questions raised in annex II to the letter to TOML from the Secretary-General dated 16 March 2026 to enable it to provide a complete and informed substantive response.

123. TOML asserts that the Authority's decision to identify it as allegedly requiring specific attention was made "without prior notice or opportunity given to TOML to be heard prior to the identification, and without any disclosure of the legal and factual bases upon which the Authority relied for the identification." It clarifies that its "core concern is not 'naming' as such, but identification as to possible non-compliance without being afforded due process, including the opportunity to know the case against them and to respond meaningfully." TOML contends that the Authority's decision "therefore was and remains procedurally defective, lacking due process, transparency and fairness."

124. TOML asserts that the manner in which it was identified through the Commission's report (doc. ISBA/31/C/4/Add.1) is itself inconsistent with the criteria and methodology set out in LTC doc. ISBA/29/LTC/5). TOML points out that

> *both* the 2024 Procedure and the 2025 "process" are concerned with risk of non-compliance and, unsurprisingly, *both* were expressly referred to by the Respondent when transmitting the 16 March questions to the

> Applicants. And it is perplexing that the Respondent now seeks in its written statement to dismiss the relevance of the 2024 Procedure to its current inquiry.

TOML notes that in developing the 2024 Procedure, the Authority was considering how to go about identifying and then publicly naming contractors that responded inadequately or failed to respond to issues of concern raised by the Commission in relation to their contractual obligations and were "at risk of non-compliance".

125. In response to the assertion of the Authority that the 2024 Procedure is distinct from that set out in paragraphs 9 and 10 of the 2025 Council Decision, TOML draws attention to certain similarities between the circumstances necessitating the elaboration of the 2024 Procedure and those stemming from paragraphs 9 and 10 of the 2025 Council Decision. It notes that

> at the point at which the Commission is posing questions to contractors pursuant to paragraphs 9 and 10 of the July 2025 Council Decision, the Commission has already considered whether there exists a risk of non-compliance – or possible non-compliance – and it has already answered that question in the affirmative. In substance, this is no different to the identification of the existence of a risk of non-compliance – possible non-compliance – under the 2024 Procedure.

126. TOML therefore contends that "the distinction is artificial and the Authority itself has recognized expressly that the 2024 Procedure <u>does</u> remain relevant." It also points to the reasons given by the Commission for the elaboration of the 2024 Procedure. Quoting the 2024 Procedure, TOML states that

> [a] key concern relates to the issue of due process. It is an elementary due process requirement, as well as a requirement of legal certainty, that contractors are aware of the potential measures and penalties to which they may be subject, depending on their contractual performance, in advance.

127. In this regard, TOML notes that the 2024 Procedure elaborates on what due process requires. In particular, the document states that

> the process for identifying contractors that may not have responded or may have responded inadequately shall be: (a) neutral and objective; (b) <u>transparent</u>, giving due regard to confidentiality obligations; (c) timely and efficient, bearing in mind the workload of the Commission and the timing of reviews of annual reports; and (d) <u>one that elicits positive responses</u> and

> encourages contractors generally to carry out their plans of work effectively. (Emphasis added by TOML)

128. TOML argues that key requirements of due process are recognized by the Commission in the 2024 Procedure as necessarily applicable in cases where contractors may be identified as at "risk of a non-compliance". Such requirements state, for example, that "the contractor understands the case against them and is afforded an opportunity to respond meaningfully, reflecting those central tenets of transparency and eliciting positive responses"; "due process requirements apply regardless of the particular obligation under consideration and the severity and scale of the concern"; and "a 'risk of non-compliance' may have important consequences. In instances of non-compliance, the Council has the power to issue punitive measures [including] … invoking termination provisions under the contract or refusing to extend an existing contract."

129. TOML asserts that the additional questions posed in annex II to the letter of the Secretary-General dated 16 March 2026 were not "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." It underscores the alleged "arbitrary nature of the identification" of the contractors in the Commission's report to the Council (doc. ISBA/31/C/4/Add.1), and it further notes that no member of the Commission was present at the Council meeting, unlike on previous occasions, to respond to concerns or provide clarification to questions raised by TOML and its sponsoring State, Tonga.

130. TOML states that the Authority "declined to substantively respond" to its requests for clarification prior to the Commission's meeting during the second half of the thirty-first session, which were addressed to the Chair of the Commission by letter dated 22 April 2026, and the Notice of Dispute issued by TOML to the Authority, dated 18 May 2026. According to TOML, the responses that the Chair of the Commission and the Secretary-General did provide to these communications from TOML merely maintained that it had to submit a substantive response to the additional questions posed by 31 May 2026. TOML asserts that it "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."

131. TOML argues that

> [t]he 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.

132. The Authority notes that "the Applicants assert breaches of their right to '*due process and fair treatment*'. And this now is what remains of the case. … There is no plausible argument by the Applicants that their rights have been violated, or could have been violated, in relation to due process." The Authority states that "the Applicants absolutely have due process rights, but at this point, those due process rights have not been violated in any way whatsoever". It maintains that any output of the Commission is advisory in nature and that the rights of the Applicant cannot be affected unless and until the Council takes action.

133. The Authority contests the assertion of TOML that

> on the plausibility of rights, all you have to do is show the existence of the rights. It is not only incorrect, but it cannot be correct. You have to show, of course, the existence of certain rights, but you also have to offer some colourable evidence that there exists a plausible basis for concluding that a violation of those rights might occur or might have occurred. … In other words, it's not just the existence of a right that matters but also some evidence that a violation of those rights is plausible.

It argues that "the Applicants' alleged rights are simply not plausible because in the present circumstances, their claims – and these Requests for the prescription of provisional measures – are patently premature".

134. The Authority asserts that

> [t]he Applicants' claims are premised on alleged rights of contractors to demand extensive disclosure, consultation, explanation, questioning, particularisation, *etc.,* <u>before</u> any request for information can be made of

> them by the Authority pursuant to section 10.3 of their contracts and the procedure set out in paragraphs 9 and 10 of the 2025 Council Decision. However, the Applicants manifestly fail to identify the legal provision that is said to be the source of any such rights.

135. The Authority notes that information concerning TOML is publicly available on the website of the US National Oceanic and Atmospheric Administration ("NOAA"). Moreover, the Commission report (doc. ISBA/31/C/4/Add.1) did not identify TOML as a contractor allegedly requiring "specific attention" as the footnote reference to the NOAA website is in the section of the Commission's report addressing sponsoring States, as opposed to contractors, and refers only to "possible non-compliance".

136. The Authority disputes the description of the Authority's institutional practices as presented by TOML. The Authority asserts that it is not "*usual practice*" for the Commission to attend Council meetings during Part I of the session, as opposed to Part II. According to the Authority, the "*informal virtual exchanges*" carried out between the Commission and certain contractors pursuant to doc. ISBA/29/LTC/6 modalities, are not comparable to the type and extent of intersessional work which would be required to address the Applicants' various requests and queries. It states that "[t]hese modalities are being carried out to increase the *understanding* between the parties, that is, the Commission and contractors. They are expressly stated to be informal, and they expressly preclude decision-making by the Commission." The Authority explains that the opinions expressed and statements on questions are considered to be informative and should not be interpreted as endorsements or recommendations by the Commission or the Secretariat. It further clarifies that all contractors engaging in such an exchange of views will be requested to sign a 'without prejudice declaration'.

137. In this regard, the Authority further states that

> the Applicants have been offered consultations; it is on this similar basis that they were offered. For example, on 22 June 2026, the Secretary-General wrote to the Applicants inviting virtual consultations between 29 and 30 June on a without-prejudice basis. This was rejected by letter from the Applicants dated 23 June 2026.

138. The Authority argues that in the letter of the Secretary-General, dated 16 March 2026, which is annexed, it is explained that

> [t]he Section 10.3 Requests are an early information-gathering step in this process, which is being impeded by the Applicants' persistent refusal to engage in the process, and their failure to provide answers to straightforward questions. By way of the Section 10.3 Requests the Applicants have already been given an opportunity to respond. The Applicants will be given further opportunity to respond, and to engage properly and meaningfully with the Commission's inquiry process, but they must first comply with their obligations to provide information pursuant to section 10.3 of their contracts and paragraphs 9 and 10 of the 2025 Council Decision. Accordingly, their claims – and these Requests – are premature and manifestly unfounded.

139. In this regard, the Authority asserts that the "Inadequate Performance Procedure" is distinct from the procedure adopted pursuant to paragraphs 9 and 10 of the 2025 Council Decision. "The Section 10.3 Requests were made pursuant to the latter procedure, as expressly stated on the face of those requests".

140. The explanation given by the Authority is that the "Inadequate Performance Procedure" applies a three-step procedure ranging over one calendar year, with steps taking place in two sessions of the Authority. It begins with the Commission's review of a contractor's annual report. The Authority notes that the three questions that were put to the Applicant on 16 March 2026 do not arise on the basis of TOML's annual report. It maintains that

> [i]t is also clear, and important, that the existence of this [Inadequate Performance] procedure, applied over a fixed time frame, and applicable to all contractors, does not preclude the Authority from carrying out its compliance functions and exercising its powers more generally. That would be an absurd result.

141. The Authority emphasizes that at this early stage of the procedure, under paragraphs 9 and 10 of the 2025 Council Decision, the only step it has taken is to request information by way of the Section 10.3 Requests. Referring to the 2026 Council Decision requesting that the Commission "*continue 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 Authority maintains that it is dedicated to "*fulfilling [its] responsibilities in good*

faith, with full respect for the rights and obligations of all parties under the Convention."

142. In response to assertions by TOML that the Authority, while deferring its requests for consultations, has at all times insisted that the deadline of 31 May 2026 for the submission by TOML of its response to the questions and requests for further clarification as requested by the Commission "remains in full effect", the Authority notes that the Secretary-General wrote to the Applicants on 22 June 2026 and offered an extension. This letter further states that the particular extension referred to by the Authority provided a revised deadline of 5 July 2026.

143. According to the Authority, "[t]he Applicants accuse the Authority of refusing to engage with them and refusing to consult. Once again, that is not accurate." It notes that the Secretary-General, in her letter dated 23 June 2026, invited the Applicant to engage in consultations, but that

> [o]f course that consultation process cannot be done in parallel with this hearing in a contentious matter during the same week. Either the Applicants should have accepted the Authority's offer made in good faith to engage in meaningful consultations this week, or to continue with these inevitably ill-fated requests for provisional measures, but the Applicants cannot have it both ways. They cannot have their cake and eat it, too.

* * *

144. The Chamber will examine whether "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 2026 Council Decision asserted by TOML is plausible.

145. At this stage of the proceedings, the Chamber is not called upon to determine definitively whether the rights claimed by the Applicant exist or to settle the competing claims of the Parties. It need only decide whether such rights are plausible in the circumstances of this case (see *"Enrica Lexie" (Italy* v. *India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015,* p. 182, at

p. 197, para. 84; *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. 306, para. 95; *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. 105; *"Zheng He" (Luxembourg* v. *Mexico), Provisional Measures, Order of 27 July 2024*, *ITLOS Reports 2024,* p. 205, at p. 235, para. 119).

146. The Chamber notes that the 2026 Council Decision in its operative paragraph 4, states that the Council

> *Supports* the Commission's intent to continue its inquiry in accordance with the Commission's mandate under the Convention and relevant rules, regulations and procedures of the Authority, and the Council Decision ISBA/30/C/19 and awaits its report and recommendations, and requests the Commission in taking the matter forward:
>
> a. to consider information obtained as a result of the Secretary-General's inquiry to contractors, any other relevant information that may be held, obtained, or received by the Authority, as well as publicly available information, as may be deemed appropriate by the Commission;
>
> b. to continue 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 Council has therefore mandated that the inquiry is to be conducted in accordance with the rules of "due process, transparency and fairness *at every stage* in the conduct of this inquiry" (emphasis added).

147. The Chamber is of the view that due process requires consistent application of the procedures. There are additional important elements identified with respect to the right to due process that are discernible from the documents of the Commission and the Council that were cited by the Parties in the written and oral proceedings.

148. The document on "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" (doc. ISBA/29/LTC/5) draws attention to the lack of "an express legal basis in the Convention, the Agreement relating to the Implementation

of Part XI of the Convention or the regulations" for "[t]he identification of contractors by name, on the basis of their failure to respond to calls from the Council or their inadequate or incomplete responses to the Commission, short of non-compliance, in publicly available documents to be introduced under the agenda of the Council".

149. A key concern identified by the Commission in the same document relates to the issue of due process. The document states that "[i]t is an elementary due process requirement, as well as a requirement of legal certainty, that contractors are aware of the potential measures and penalties to which they may be subject, depending on their contractual performance, in advance."

150. The Commission's document emphasizes the importance of neutral and objective procedures; transparency with due regard to confidentiality obligations; accommodation of time constraints; and procedures designed to elicit positive responses and encourage contractors generally to carry out their plans of work effectively.

151. Other Commission documents emphasize the importance of consultations and facilitating an exchange of views. The "Modalities for the exchange of views facilitated by the secretariat between contractors and members of the Legal and Technical Commission", annexed to document ISBA/29/LTC/6, provides:

> Establishing a direct exchange of views between contractors and members of the Commission on matters of mutual interest offers a unique opportunity to increase mutual understanding and expectations in relation to the implementation of the plans of work for exploration and ultimately, optimal management of the Area and its resources for the benefit of humankind.

152. The "Decision of the Council of the International Seabed Authority relating to the procedures and criteria for the extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982" (doc. ISBA/21/C/19) indicates that the basis for regulatory action should be clearly articulated and the organs responsible for specific tasks identified. A clear statement of documentation requirements should be provided. Indicative timelines for procedural steps should be established in advance.

There should be an expeditious consideration of contracts, avoiding discrimination in the exercise of the Authority's powers and functions. An indication may be given of any default assumptions absent statements to the contrary. Notice should be provided of unsatisfactory responsiveness to inquiries made of contractors in compliance procedures, and a statement of reasons for any preliminary adverse findings together with opportunities for corrective actions within established timeframes. The consequences of non-compliance, including stop-gap measures such as transitional provisions that may apply, should be clearly indicated.

153. Another document, "Information relating to compliance by contractors with plans of work for exploration", Report of the Secretary-General (doc. ISBA/24/C/4), emphasizes the importance of maintaining a clear separation of the functions in the organs of the Authority between licensing (approving plans of work in the form of contracts) and subsequent compliance with and enforcement of such contracts. The Report states that "[a]n inherent conflict of interest exists when the body that approves contracts for exploration and the financial terms thereof is the same body that is responsible for ensuring compliance."

154. The 2026 Council Decision requiring the Commission "to ensure due process, transparency and fairness at every stage in the conduct of an inquiry, including by providing Contractors and Sponsoring States with the right to respond", must be interpreted in light of the established practice of the Commission and Council in upholding the due process rights of contractors. The Chamber notes that the essential elements and principles set out therein provide the necessary guidance to the Commission in implementing the Council's decision. The Chamber observes that the Applicant's right to due process in the conduct of the inquiry is not contested.

* * *

155. The Chamber notes that TOML also relies on the obligation to act in good faith, as stated in article 157 of the Convention and section 13, paragraph 4, of its Exploration Contract which is to be observed by the Authority in organizing and controlling activities in the Area. The obligation is invoked by TOML with regard to the allegations concerning the failure of the Authority to exercise its powers with due

regard to the procedural safeguards inherent in the contractual and regulatory framework governing the Parties and, in particular, the right to due process. Furthermore, the right to have its legitimate interests safeguarded in the conduct of activities in the Area is also directly linked by TOML to the due process concerns it raises. The right to due process is central in all of these claims.

156. In light of the above, the Chamber finds that the right asserted by TOML 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 procedure, including as required by the 2026 Council Decision, is plausible.

157. The Chamber notes that TOML maintains its request concerning all rights as reflected in the final submissions.

158. Having established that the right to due process asserted by TOML is plausible and addresses the basic procedural concerns presented in relation to all of the rights claimed by TOML in this case, the Chamber considers that it need not address the question of whether the additional rights asserted by TOML are plausible.

159. The Chamber also considers that there is a link between the plausible right of due process claimed by the applicant and the provisional measures it seeks (see *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* p. 146, at p. 159, para. 63).

IV. Real and imminent risk of irreparable prejudice

160. Under article 290, paragraph 1, of the Convention, the Chamber may prescribe provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, if the urgency of the situation so requires. Urgency implies that there is a real and imminent risk that

irreparable prejudice may be caused to the rights of the parties to the dispute, pending the final decision (*"Zheng He" (Luxembourg* v. *Mexico), Order of 27 July 2024, ITLOS Reports 2024*, p. 205, at p. 236, para. 126).

161. Accordingly, the Chamber is required to find whether there is a risk that irreparable prejudice may be caused to the rights claimed by a party to the dispute and whether such risk is real and imminent (*M/V "Louisa*" *(Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 69, para. 72; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte 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; *"Zheng He" (Luxembourg* v. *Mexico), Order of 27 July 2024, ITLOS Reports 2024*, p. 205, at p. 236, para. 126).

162. TOML contends that the continuation of the inquiry conducted by the Commission exposes it to a real and imminent risk that findings, recommendations or other "institutional outputs" may be adopted before the Chamber renders its decision on the merits. In particular, TOML emphasizes that

> [t]he risk of irreparable prejudice in the current case arises from the real risk of further steps being taken in the inquiry that are prejudicial to the Applicants without the Applicants being afforded due process, including the potential making of recommendations regarding non-compliance. Irreparable prejudice to rights in respect of due process is self-evident and, of course, the central claims in the two Applications that will fall for final determination are that the Applicants are not being afforded due process.

163. TOML further asserts the urgency of the measures, in light of the timetable of the meetings of the LTC and the Council, any findings or recommendations adopted by the Commission may be transmitted to the Council and become part of the

Authority's institutional decision-making process before the Chamber has ruled upon the Application. It states:

> 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.

164. TOML maintains that the resulting prejudice would be irreparable in nature. In its view,

> [o]nce 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.

TOML therefore argues that

> [t]he right the Applicants seek to preserve is not a right to revenue. The right is a procedural right. It is the right to due process. And procedural rights are uniquely vulnerable. Once a process has moved forward without the safeguards that ought to have governed it, it is often impossible to recreate the position that previously existed.

165. On that basis, TOML requests the Chamber, *inter alia*, to "[o]rder the Authority to immediately suspend the inquiry regarding the alleged '*possible non-compliance*'"; to "[o]rder the Authority to ensure that no recommendations, findings, reports, or other outputs arising from the Commission's inquiry are adopted, issued, published, communicated, or otherwise relied upon pending the final decision of the Chamber"; and, more generally, to "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."

166. The Authority, for its part, contends that the conditions for the prescription of provisional measures are not satisfied because there is "no real and imminent risk of

any rights being irreparably harmed." For the Authority, this applies to both the non-compliance procedure and the contract extension procedure.

167. The Authority maintains that the non-compliance procedure is only at a preliminary stage since

> [n]o steps have been taken by the Authority that could be said to affect the Applicants' rights in any way at all. At this early stage of the procedure, as provided for by paragraphs 9 and 10 of the 2025 Council Decision … the only material step taken by the Authority has been to request information from the Applicants, and to do so by way of a private letter.

168. With respect to the alleged irreparable prejudice, the Authority argues that any prejudice that TOML could "hypothetically suffer is necessarily revenue-based" and "accordingly not of a nature to be treated as irreparable." In the view of the Authority, "it is well established that loss of revenue is amply suited to compensation, such that it is not irreparable."

169. With respect to the requirement of urgency, the Authority submits that "[t]here is nothing to support [TOML's] *assumption* that the Commission will seek to conclude its inquiry process … without ensuring due process, transparency and fairness, including providing [TOML and its sponsoring State (Tonga)] the right to respond." The Authority further emphasizes that "[t]here is no fixed timeframe prescribed by paragraph 10 of the 2025 Council Decision" and that there is therefore no imminent prospect of the adoption of findings or recommendations capable of affecting TOML's rights before the Chamber renders its decision.

170. The Authority further states that it has consistently communicated that TOML's "due process rights have been fully respected throughout this process" and that TOML was provided with assurances which are "a matter of public record in these proceedings", by the Chair of the Commission and by the Secretary-General. In the view of the Authority, among these assurances, of particular relevance is the fact that "the Applicants' due process rights" will continue to be fully respected throughout this procedure, since "the Authority is dedicated to upholding all of its obligations to the Applicants during the inquiry process".

171. On this basis, the Authority submits that "there is no need for the Chamber to impose any provisional measures." In this respect, it emphasizes that, "if in due course, as the Commission conducts its inquiry, the Applicants consider that the undertaking given by the Agent has not been met, they'll be free to come back to this Chamber to address the issue."

* * *

172. The Chamber must determine whether there is a real and imminent risk of irreparable prejudice to the rights claimed by TOML pending the Chamber's final decision. Such determination can be taken only in light of the particular circumstances of the case. TOML has alleged several procedural deficiencies in the conduct of the inquiry undertaken by the Authority pursuant to the 2025 Council Decision and asserts a plausible right to due process and fair treatment, including the right to be informed on 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.

173. The Chamber takes note of the Authority's assurances which may help alleviate the real and imminent risk of irreparable prejudice to TOML's right to due process. In the Chamber's view, however, those assurances do not fully address all the procedural concerns relied upon by TOML in support of its request for provisional measures. The Chamber observes that the assurances remain framed in general terms. The request for clarification by TOML has not been answered, some deadlines have remained unchanged, and the inquiry continues to be affected by alleged procedural deficiencies. In these circumstances, the Chamber considers that the real and imminent risk of irreparable prejudice to TOML's right to due process has not been dispelled.

174. The Chamber considers that a failure to afford due process may cause irreparable prejudice and that such prejudice may not always be reversed nor may it be adequately redressed by subsequent financial compensation. The right to due process, to be effective, must be exercised timely in the decision-making process, that is to say, when such right is apt to produce its intended legal effect.

Consequently, the loss of the opportunity to participate effectively in the decision-making process cannot ordinarily be remedied *ex post facto*.

175. In light of the above, the Chamber finds that there is a real and imminent risk of irreparable prejudice to the rights claimed by TOML pending the Chamber's final decision. The Chamber accordingly considers that the urgency of the situation requires the prescription of provisional measures under article 290, paragraph 1, of the Convention.

V. Provisional measures to be prescribed

176. In light of the above, the requirements for the prescription of provisional measures under article 290, paragraph 1, of the Convention are met. The Chamber may prescribe "any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute".

177. The Chamber notes in this regard that, in accordance with article 89, paragraph 5, of the Rules, it may prescribe measures different in whole or in part from those requested.

178. TOML requests the Chamber to prescribe provisional measures requiring the Authority to immediately suspend the inquiry into alleged possible non-compliance of TOML with its contractual obligations; to refrain from taking, authorizing, permitting any further steps or measures in connection with that inquiry pending the final decision of the Chamber; to ensure that no recommendation, findings, reports or other outputs arising from the Commission's inquiry are adopted, issued, published, communicated or otherwise relied upon pending the final decision of the Chamber; and to 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.

179. The Authority requests the Chamber to reject all requests for the prescription of provisional measures made by TOML, and it requests the withdrawal of the direction made by the President of the Chamber pursuant to article 90, paragraph 4,

of the Tribunal’s Rules. Finally, the Authority requests the Chamber to order that both contractors bear the Authority’s share of the costs in equal share.

180. The Chamber notes that the Authority has confirmed on 7 July 2026 the following in writing: “[T]here is no need for the Chamber to provide any ‘urgent confirmation’, or any ‘further relief’, as sought in the Applicants’ letter dated 7 July 2026”. The Chamber notes further that TOML has confirmed on 8 July 2026 that it “no longer require[s] the Chamber’s consideration and determination of the matters set out in the 7 July letter”.

* * *

181. The Chamber is of the view that the questions at the centre of this request for provisional measures concern the role of due process in a procedure undertaken by the Authority in which TOML is involved: the 2025 Council Decision. This procedure is part of the governance function of the Authority, and the Commission plays a central role in it. A lack of clarity concerning the procedure may lead to irreparable harm for TOML.

182. The Chamber notes that the Authority has issued assurances and undertakings during the current provisional measures procedure, stressing that it has acted and will act in accordance with rules of due process.

183. The Chamber notes that the duty to cooperate is a fundamental norm of international law which is reflected in various provisions of the Convention. It underpins relations between States, including within intergovernmental organizations such as the Authority. The functioning of the Authority relies on the duty to cooperate in order to organize and control activities in the Area, particularly with a view to administering the resources of the Area, for the benefit of humankind as a whole.

184. The optimal functioning of the governance system for activities in the Area, as established by Part XI of the Convention and the 1994 Agreement, requires cooperation between the Authority, the contractors and the sponsoring States for its success. The duty of cooperation requires contractors and sponsoring States to

cooperate with the Authority, and the Authority is by implication bound to cooperate with them.

185. In this context, the Chamber recalls article 157, paragraph 4, of the Convention, which states:

> All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership.

186. The 2025 Council Decision is crucial to the contractors concerned. The Authority has given the undertaking that due process rights will be honoured. It follows that further clarity and transparency about the applicable procedural rules are to be provided to the contractors before additional steps are taken by the Authority.

187. The Chamber places on record the assurance with respect to due process given by the Authority during the hearings on 2 and 3 July 2026:

> The Authority has consistently communicated that the Applicants' due process rights have been fully respected throughout this process, and we will continue to honour these rights. This assurance has been made publicly and remains on record. There is no doubt regarding our commitment in this regard.
> (ITLOS/PV.26/C34-C35/4, p. 11, ll. 44-50)

188. The Chamber considers it appropriate to prescribe provisional measures requiring the Authority to act in accordance with the relevant legal framework, including rules of due process, in the procedure for the inquiry mandated by the Council under paragraphs 9 and 10 of the 2025 Council Decision. It also considers it appropriate to prescribe provisional measures requiring the Authority to clarify or provide to TOML the relevant information concerning the procedures for the implementation of paragraphs 9 and 10 of the 2025 Council Decision and the questions posed to TOML so as to enable TOML, engaging in a constructive manner with the Authority, to respond meaningfully to the questions and within a reasonable period of time.

189. The Chamber also considers it appropriate to require the Parties to cooperate and refrain from any action that might lead to aggravating the dispute.

190. Pursuant to article 95, paragraph 1, of the Rules, each Party is required to submit as soon as possible a report and information on compliance with any provisional measures prescribed. The Chamber may, if necessary, request further information from the Parties on the implementation of the provisional measures prescribed, and in this regard, it is appropriate for the President to be authorized to request such information in accordance with article 95, paragraph 2, of the Rules.

191. The present Order in no way prejudges the question of the jurisdiction of the Chamber to deal with the merits of the case or questions relating to the merits themselves and, moreover, leaves unaffected the respective rights of TOML and the Authority to submit arguments in respect of those questions.

VI. Operative provisions

192. For these reasons,

THE CHAMBER,

(1) Unanimously,

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

(a) The Authority shall act in accordance with the relevant legal framework, including rules of due process, in the procedure for the inquiry mandated by the Council under paragraphs 9 and 10 of the 2025 Council Decision;

(b) In particular, the Authority shall clarify or provide to TOML the relevant information concerning the procedures for the implementation of paragraphs 9 and 10 of the 2025 Council Decision and the questions posed to TOML so as to enable TOML, engaging in a constructive manner with the Authority, to respond meaningfully to the questions and within a reasonable period of time; and

(c) The Parties shall cooperate and refrain from any action that might lead to aggravating the dispute.

(2) Unanimously,

Decides that TOML and the Authority shall each submit to the Chamber the initial report referred to in paragraph 190 not later than 31 August 2026, and authorizes the President of the Chamber, after that date, to request such information from the Parties as he may consider appropriate.

(3) Unanimously,

Decides that each Party shall bear its own costs for the present proceedings.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this eighteenth day of July two thousand and twenty-six, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to TOML and the Authority, respectively.

(Signed)
David Joseph ATTARD
President of the Seabed Disputes Chamber

(Signed)
Ximena HINRICHS OYARCE
Registrar

Judge Kittichaisaree appends a declaration to the Order of the Chamber.

Judge Brown appends a declaration to the Order of the Chamber.