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Press Release

SEABED DISPUTES CHAMBER DELIVERS ITS ORDER IN CASE CONCERNING AN INQUIRY BY THE INTERNATIONAL SEABED AUTHORITY (TONGA OFFSHORE MINING LTD. V. INTERNATIONAL SEABED AUTHORITY), PROVISIONAL MEASURES

The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (“the Chamber”) delivered today its Order in *Case concerning an inquiry by the International Seabed Authority (Tonga Offshore Mining Ltd. v. International Seabed Authority), Provisional Measures*.



History of the proceedings and factual background

By an application filed with the Registry of the Tribunal on 5 June 2026, Tonga Offshore Mining Ltd. (“TOML”) instituted proceedings before the Chamber against the International Seabed Authority (“the Authority”) in a dispute regarding an inquiry by the Authority. Together with the Application, TOML submitted to the Chamber a Request for the prescription of provisional measures under article 290, paragraph 1, of the United Nations Convention on the Law of the Sea (“the Convention”).

The factual background of the dispute, as presented by the Parties, can be summarized as follows (see paragraphs 35 to 42 of the Order): TOML is a company incorporated in Tonga and a contractor sponsored by Tonga. A contract for exploration for polymetallic nodules between TOML and the Authority was concluded on 11 January 2012 for a period of 15 years (“the Exploration Contract”). In a decision of the Council of the Authority (“the Council”) dated 21 July 2025 (“the 2025 Council Decision”), the Council requested the Secretary-General of the Authority (“Secretary-General”) to require “additional information from contractors at risk of non-compliance with their contractual obligations” and to forward this information to the Legal and Technical Commission of the Authority (“the LTC”) for its consideration. In its response to a circular by the Secretary-General, TOML expressed the view that, “the Council’s Decision is unlawful and that the Circular is ultra vires”. During the first part of its thirty-first session, the LTC reported that it intended to request additional information from two contractors that it had identified as “requiring specific attention for possible non-compliance”. On 19 March 2026, the Council took note of this identification and indicated that it expected a report from the LTC on that issue during the second part of the thirty-first session (“the 2026 Council Decision”). The Council also requested the LTC “[t]o continue to ensure due process ... at every stage in the conduct of this inquiry”. By letter dated 16 March 2026, the Secretary-General informed TOML that it had been identified as requiring specific attention to possible non-compliance, and that the LTC requested additional information from it to be provided no later than 31 May 2026. On 22 April 2026, TOML wrote to the LTC to “request further clarification and particulars in respect of the questions raised and their legal bases”. The Chair of the LTC responded by recalling that the LTC was not in session. By letter dated 18 May 2026, 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 and “invite[d] the Authority to exchange views concerning the subject matter of the dispute and the means by which it may be resolved”.

The Chamber held public sittings on 2 and 3 July 2026. In its final submissions, TOML requested the Chamber to 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."

In its final submissions, the Authority requested the 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."

The Chamber's Order of 18 July 2026

I. Part XI of the Convention

In its Order, the Chamber states that, within the institutional structure established by Part XI, the Authority and the Chamber perform distinct yet complementary functions, and that "[t]he effectiveness, coherence and integrity of the regime established by Part XI depend upon the proper observance of that foundational balance" (paragraph 45 of the Order). The Chamber is of the view 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" (paragraph 47 of the Order).

II. *Prima facie* jurisdiction

The Chamber recalls that it must "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, and article 187, subparagraph (c), of the Convention (paragraph 52 of the Order). The Chamber "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" (paragraph 55 of the Order).

Noting that "TOML is a juridical person within the meaning of article 153, paragraph 2(b), of the Convention" and that "TOML is a party to a contract for exploration of polymetallic nodules with the Authority", the Chamber finds that "the requirements for access to it by the Parties in accordance with the Convention are met" (paragraphs 58-60 of the Order).

Existence of a dispute

The Chamber notes that “the Parties disagree as to whether due process has been observed” (paragraph 70 of the Order). It is therefore of the view that “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” (paragraph 71 of the Order).

A dispute with respect to activities in the Area

With regard to the question whether the dispute concerns activities in the Area, the Chamber is of the view that “[a]ctivities in the Area entail substantive as well as procedural rights for the contractor”, and that “[o]ne 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” (paragraph 82 of the Order).

The Chamber 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” (paragraph 84 of the Order).

Article 283 of the Convention

Recalling 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”, the Chamber concludes that *prima facie* the requirements of article 283 of the Convention are satisfied (paragraph 94 of the Order).

Article 189 of the Convention

The Chamber notes that “[i]f 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” (paragraph 97 of the Order).

The Chamber considers that, in the present dispute, it “shall not pronounce on the merits of the Authority’s exercise of its discretionary powers in accordance with Part XI”, and that its jurisdiction concerns “the observance by the Authority of due process”, which “is extraneous to the exercise by the Authority of its discretionary powers” (paragraphs 115-116 of the Order). The Chamber therefore “finds that article 189 of the Convention does not preclude the assertion of its jurisdiction in these proceedings” (paragraph 117 of the Order).

III. Plausibility of rights

The Chamber recalls that it may exercise its power to prescribe provisional measures “only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible” (paragraph 118 of the Order).

The Chamber notes that, according to the 2026 Council Decision, the Council has “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” (paragraph 146 of the Order). In this regard, the Chamber also refers to additional “documents of the Commission and the Council that were cited by the Parties” (paragraph 147 of the Order). Accordingly, the Chamber finds that “the right asserted by TOML to due process and fair treatment ... is plausible” (paragraph 156 of the Order).

IV. Real and imminent risk of irreparable prejudice

The Chamber recalls that, “[u]nder 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.” It notes that “[u]rgency 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” (paragraph 160 of the Order).

In this regard, TOML refers to “the continuation of the inquiry conducted by the Commission” (paragraph 162 of the Order). The Authority contends that there is “no real and imminent risk of any rights being irreparably harmed” and further states that “it has consistently communicated that TOML’s ‘due process rights have been fully respected ...’ and that TOML was provided with assurances” (paragraphs 166 and 170 of the Order).

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”, while considering that those assurances “do not fully address all the procedural concerns relied upon by TOML” (paragraph 173 of the Order). 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” (paragraph 175 of the Order).

V. Provisional measures to be prescribed

The Chamber recalls that it may prescribe “any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute”, as provided for in article 290, paragraph 1, of the Convention (paragraph 176 of the Order). The Chamber notes in this regard that, in accordance with article 89, paragraph 5, of the Rules of the Tribunal, it may prescribe measures different in whole or in part from those requested (paragraph 177 of the Order).

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.” Furthermore, the Chamber “considers it appropriate to require the Parties to cooperate

and refrain from any action that might lead to aggravating the dispute” (paragraphs 188-189 of the Order).

The Chamber also states that “[p]ursuant 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” (paragraph 190 of the Order).

VI. Operative provision (paragraph 192 of the Order)

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.

Judges Kittichaisaree and Brown append a declaration to the Order of the Chamber.

The text of the Order, the declarations as well as a recorded webcast of the reading are available on the [website](#) of the Tribunal.

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