

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
SEABED DISPUTES CHAMBER

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

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

APPLICATION INSTITUTING PROCEEDINGS BROUGHT BY
TONGA OFFSHORE MINING LTD. BEFORE THE SEABED DISPUTES
CHAMBER OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE
SEA

30 MAY 2026

Table of Contents

PART I

Chapter 1	Jurisdiction of the Tribunal	3
Chapter 2	Nature of Claim	8
Chapter 3	Statement of Facts and Grounds Upon which the Claim is Based.....	11
Chapter 4	Decision and Remedies Sought.....	19
Chapter 5	Provisional Measures	21
Chapter 6	Appointment of Agent	22

PART II

Annex 1	Exploration Contract between TOML and the International Seabed Authority (“ Authority ”) dated 11 January 2012.
Annex 2	The Secretary-General of the Authority’s Circular/2026/001 dated 15 January 2026.
Annex 3	Letter from TOML to the Authority dated 9 February 2026.
Annex 4	Letter from the Authority to TOML dated 16 March 2026.
Annex 5	Letter from TOML to the Authority dated 22 April 2026.
Annex 6	Letter from the Authority to TOML dated 13 May 2026.
Annex 7	Notice of Dispute issued by TOML to the Authority dated 18 May 2026.
Annex 8	Letter from the Authority to TOML dated 26 May 2026.
Annex 9	Letter from the Authority to TOML dated 5 August 2024.
Annex 10	Printout of the Authority’s post on the professional networking platform, LinkedIn, dated 20 November 2024 (webpage accessed on 29 May 2026).

PART I

APPLICATION OF TONGA OFFSHORE MINING LTD. INSTITUTING PROCEEDINGS BEFORE THE SEABED DISPUTES CHAMBER OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Sydney, 30 May 2026

Ms Ximena Hinrichs Oyarce

Registrar

Registry of the International Tribunal for the Law of the Sea

Am Internationalen Seegerichtshof 1

22609 Hamburg

Germany

Madam Registrar,

I, Mr Nathan Eastwood, have the honour to submit to the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (the “**Chamber**”) an Application instituting proceedings on behalf of Tonga Offshore Mining Ltd. (“**TOML**”) against the International Seabed Authority (the “**Authority**”) in the following case concerning the Authority’s failure to afford due process, transparency and fairness in its inquiry of TOML as a Contractor allegedly requiring “*specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the Area*” (“**Application**”).

As set out in this Application, this case: (i) arises from the acts and omissions of the Authority relating to activities in the Area, directed at TOML and directly affecting TOML’s legitimate interests arising from the exploration contract between TOML and the Authority dated 11 January 2012 (“**Exploration Contract**”); and (ii) concerns the interpretation and application of the Exploration Contract, namely, relating to the Authority’s breach of the contract arising from these acts and omissions.

Chapter 1

Jurisdiction of the Tribunal

1. The Tribunal has jurisdiction to hear this Application based on the compulsory jurisdiction of the Chamber over disputes concerning activities in the Area pursuant to Article 187 of the 1982 United Nations Convention on the Law of the Sea (“**UNCLOS**” or the “**Convention**”). Article 21 of the Statute of the International Tribunal for the Law of the Sea specifies that the jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with UNCLOS.
2. Article 187(c) of UNCLOS specifies that the Seabed Disputes Chamber has jurisdiction over “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**”.(Emphasis added)
3. The dispute concerns: (i) 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 (ii) 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 relating to the Implementation of Part XI of UNCLOS (“**1994 Agreement**”), which is directly engaged by the conduct at issue in this Application. This contractual aspect of the dispute arises from the same acts and omissions of the Authority that are disputed under Article 187(c)(ii).
4. TOML is a company incorporated in the Kingdom of Tonga (“**Tonga**”), with its principal place of business in Tonga, and operates as a sponsored contractor under the regulatory framework of UNCLOS.
5. On 11 January 2012, TOML entered into the Exploration Contract, being a 15-year exploration contract with the Authority for the exploration of polymetallic nodules in

the Clarion-Clipperton Zone.¹ The Exploration Contract is due to expire on 11 January 2027.

6. At all times while the Exploration Contract has been in force, Tonga has been TOML's sponsoring State.
7. The Authority is established by Article 156 of UNCLOS and is bound by its provisions, including Article 187(c).
8. As set out in detail in Chapters 2 (Nature of Claim) and 3 (Statement of Facts and Grounds Upon which the Claim is Based) of this Application, TOML is in dispute with the Authority regarding the manner by which the Authority, acting through the Secretary-General and the Legal and Technical Commission ("**LTC**" or "**Commission**"), is conducting its inquiry into TOML as a contractor allegedly requiring "*specific attention*" for possible non-compliance with its contractual obligations arising out of direct or indirect actions related to activities in the Area.
9. The Authority's inquiry arises out of a decision adopted by the Council of the Authority on 21 July 2025² which among other things:
 - (a) requested the Secretary-General to require additional information from contractors at risk of non-compliance with their contractual obligations, and to forward that information to the LTC for its consideration; and
 - (b) requested the LTC to report and make appropriate recommendations to the Council during Part I of the 31st Session on the outcome of the inquiry, and urged it 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*".
10. Notwithstanding TOML's confirmation that there has been no incident, activity or event that might place TOML at risk of non-compliance with its contractual obligations,³ on 16 March 2026, the LTC identified TOML as allegedly requiring

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

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

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

specific attention for possible non-compliance and have requested TOML provide additional information.⁴

11. The Authority's decision to identify TOML 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.
12. The Authority's decision therefore was and remains procedurally defective, lacking due process, transparency and fairness. Critically, from the outset, the Authority denied TOML a right to respond prior to the Authority's decision to identify TOML as a contractor allegedly requiring specific attention.
13. The manner in which the Authority continues to conduct its inquiry remains procedurally defective: on 22 April 2026, TOML requested the Authority provide further particulars, clarification of the legal and factual bases relied upon, disclosure of materials and criteria applied by the Authority in identifying TOML as allegedly requiring specific attention, confirmation of the applicable process for the Authority's inquiry, and assurances of due process safeguards, including the right to be heard.⁵
14. On 13 May 2026, the Authority, through the LTC, responded but declined to address the substance of TOML's requests or provide the procedural clarity and assurances sought.⁶ At the same time, it maintained the requirement that TOML submit a substantive response by 31 May 2026. TOML is therefore required to respond to matters of alleged "*possible non-compliance*" without knowing the case it is required to meet, the evidentiary basis for the inquiry, or the criteria by which its conduct is being assessed. The Authority's response thus not only failed to cure the procedural defects identified by TOML but actively reinforced them. By conducting the inquiry in an opaque, arbitrary and discriminatory manner, the Authority was and is in breach of:
 - (a) the Council's decision requiring the LTC to conduct the inquiry with "*due process, transparency and fairness at every stage*" and to "*provide contractors and their Sponsoring States a right to respond*"⁷;

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

⁵ **Annex 5:** Letter from TOML to the Authority dated 22 April 2026.

⁶ **Annex 6:** Letter from the Authority to TOML dated 13 May 2026 (received by TOML on 15 May 2026).

⁷ "Decision of the Council relating to the report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations (ISBA/30/C/19)" dated 19 March 2026 (ISBA/31/C/18).

- (b) the LTC's own published criteria and methodology set out in ISBA/29/LTC/5 for identifying contractors at risk of non-compliance with their contractual obligations;⁸ and
- (c) section 13.4 of the Exploration Contract which requires the Authority to "*fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.*"
15. While TOML remains willing to engage substantively with the Authority's inquiry, its ability to engage is wholly contingent upon the Authority providing a full and complete response to TOML's 22 April requests. Without the Authority's response, and the lack of due process afforded to TOML to date, TOML is unable to meaningfully engage with the Authority without the risk of prejudicing its own position within the Authority's regulatory framework.
16. TOML has sought to settle this dispute in accordance with the principles of good faith, procedural fairness, and the dispute settlement framework established under UNCLOS. Relevantly, in addition to its 22 April letter, on 18 May 2026, TOML 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.⁹
17. On 26 May 2026, the Authority, through the Secretary-General, wrote to TOML (by way of a letter received by TOML on 27 May 2026, i.e., just two days before TOML's proposed deadline for consultations), in which the Authority acknowledged TOML's concerns but deferred any engagement on these concerns pending a "*thorough legal assessment*".¹⁰ The Authority's 26 May letter offered no concrete timeline or procedural steps for consultations to take place, or for the Authority to address the issues raised in the Notice of Dispute, merely asserting that the LTC was considering how TOML's requests "*may be accommodated.*" The 26 May letter did not address the substance of the Notice of Dispute or relieve TOML of its obligation to respond to the LTC's questions (set out in the Authority's 16 March letter) by 31 May 2026.
18. To date, the Authority has not substantively engaged with any of TOML's attempts to resolve the dispute.

⁸ "Criteria for identifying contractors that have responded insufficiently or incompletely, or failed to respond, to the calls from the Council to address issues identified by the Legal and Technical Commission in relation to their contractual obligations" dated 19 April 2024 issued by the Legal and Technical Commission (ISBA/29/LTC/5).

⁹ **Annex 7:** Letter from TOML to the Authority dated 18 May 2026 containing Notice of Dispute.

¹⁰ **Annex 8:** Letter from the Authority to TOML dated 26 May 2026.

19. The Authority's failure or refusal to substantively engage with TOML has directly affected TOML's legitimate interests in connection with its Exploration Contract and its record of compliance within the Authority's regulatory framework. In these circumstances, the absence of any substantive engagement from the Authority on the issues raised in TOML's 18 May Notice of Dispute, coupled with the 31 May 2026 deadline imposed by the Authority on TOML to respond to the LTC's questions regarding alleged "*possible non-compliance*", and the impending meetings of the LTC from 29 June to 10 July 2026, leave TOML with no choice but to pursue proceedings before the Chamber.
20. The dispute is not contingent upon any final determination by the Authority. The acts complained of — including TOML's identification for specific attention and the continuation of the inquiry without due process — have already directly affected TOML's legitimate interests and its ability to fully participate in the inquiry. As such, the dispute has crystallised within the meaning of Article 187(c)(i) and (ii).

Chapter 2

Nature of Claim

21. This claim concerns:

- (a) the Authority's, acting through the LTC, identification of TOML for "*specific attention to possible non-compliance*" without:
 - i. affording TOML an opportunity to be heard prior to making this decision, and
 - ii. disclosure of evidence, criteria, or methodology leading to the decision.

This identification was not carried out in accordance with the LTC's established criteria and methodology set out in ISBA/29/LTC/5.¹¹ Under that framework, the identification of a contractor as potentially non-compliant must follow a structured process involving prior engagement with the contractor, the LTC's application of defined criteria, and an opportunity for the contractor to respond. The manner in which TOML was identified by the Authority in this case departs fundamentally from that process;

- (b) the Authority's failure to afford TOML basic procedural safeguards prior to and following the identification of TOML for specific attention, including the failure to comply with the Council's binding decision (ISBA/31/C/18) requiring due process, transparency and fairness at every stage and providing contractors and sponsoring States a right to be heard and address any allegations raised concerning their conduct;
- (c) the Authority's refusal, in its response to TOML's letter of 22 April 2026, to provide the requested further particulars, disclosure of the legal and factual bases relied upon, and confirmation of the inquiry process and applicable procedural safeguards, while maintaining the requirement that TOML submit a substantive response, thereby requiring TOML to respond without knowledge of the case it must meet and reinforcing the procedural defects in the conduct of the inquiry. In doing so, the LTC asserted that it could not address these matters prior to its next meeting at Part II of the 31st Session of the Authority, notwithstanding its established practice of undertaking intersessional work, including in relation to the monitoring of potential non-compliance by contractors.¹² The LTC's position is therefore inconsistent with its own working

¹¹ "Criteria for identifying contractors that have responded insufficiently or incompletely, or failed to respond, to the calls from the Council to address issues identified by the Legal and Technical Commission in relation to their contractual obligations" dated 19 April 2024 issued by the Legal and Technical Commission (ISBA/29/LTC/5).

¹² See, for example, **Annex 9**: Letter from the Authority to TOML dated 5 August 2024 in relation to the LTC's assessment of TOML's annual report. The letter notes at p. 2 that, "*The Commission will conduct its assessment intersessionally, and TOML will be given the opportunity to respond to the Commission's observations and take corrective actions in accordance with the process articulated in the Criteria, and the Modalities for facilitating an exchange of views between contractors and members of the Commission (ISBA/29/LTC/6).*" See also, "Report of the Chair of the Legal and Technical Commission

- methods and further demonstrates the arbitrary nature of the Authority's identification of TOML as a contractor allegedly requiring "*specific attention*" and its approach to the inquiry. That refusal is further underscored by the Authority's subsequent confirmation that TOML's requests were only now being considered by the Commission, rather than having been addressed at the relevant time;
- (d) the continuation of the inquiry in circumstances that deprive TOML of a meaningful opportunity to understand and respond to the case it is said it is required to meet;
 - (e) the serious prejudice caused to TOML's compliance record within the Authority's regulatory framework, which cannot be fully cured by subsequent procedural correction by the Authority; and
 - (f) the Authority's breach of its obligation under section 13.4 of the Exploration Contract to fulfil in good faith its powers and functions under UNCLOS and the 1994 Agreement, including by conducting an inquiry without affording due process and requiring TOML to respond substantively to the inquiry without disclosing its basis or affording due process.
22. These acts of the Authority give rise to a dispute under Article 187(c)(i) and (ii) of UNCLOS, as they: (i) constitute acts and omissions of the Authority relating to activities in the Area that are directed at TOML and directly affect its legitimate interests; and (ii) concern the interpretation or application of TOML's Exploration Contract.
23. The manner in which the Authority's inquiry has been initiated and conducted has already caused serious prejudice to TOML's standing within the regulatory framework of the Authority, which cannot be cured by subsequent procedural correction. While the LTC, in its report ISBA/31/C/4/Add.1¹³ to the Council, did not explicitly name TOML, it included references in that report, including through footnoted materials and contextual indicators, that enabled TOML to be readily identified in the public domain as a contractor allegedly requiring "*specific attention*". The LTC's arbitrary and discriminatory identification of TOML as requiring "*specific attention for possible non-compliance*"—published in the LTC's

on the work of the Commission at the second part of its thirtieth session" dated 7 July 2025 (ISBA/30/C/4/Add.1), para. 8, which explicitly notes the LTC's intersessional work with potentially non-compliant contractors in May 2025.

¹³ "Report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations" dated 6 March 2026 (ISBA/31/C/4/Add.1).

report¹⁴ to the Council without prior notice to TOML, without disclosure of any legal or factual basis, and without affording TOML a prior opportunity to be heard—has impaired confidence in TOML’s compliance record among participants in the Authority’s processes.

24. The continuation of the inquiry in its current, procedurally defective form gives rise to ongoing and non-remediable prejudice to TOML’s rights and legitimate interests under its Exploration Contract and UNCLOS.

¹⁴ “Report of the Legal and Technical Commission on the implementation of the Council’s decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations” dated 6 March 2026 (ISBA/31/C/4/Add.1).

Chapter 3

Statement of Facts and Grounds Upon which the Claim is Based

25. On 21 July 2025, the Council of the Authority issued the “Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission” (ISBA/30/C/19) (“**July 2025 Council Decision**”).¹⁵ Paragraphs 9 and 10 of this Decision provided:
- “9. Also requests 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, further requests the Secretary-General to forward that information to the Commission for its consideration, and requests the Commission to report and make appropriate recommendations to the Council during the first part of its thirty-first session on the outcome of the inquiry;*
- 10. Urges the Commission, with reference to paragraph 9 above and in accordance with section 27 of the standard clauses for exploration contracts, 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;”*
26. On 15 January 2026, the Secretary-General issued Circular/2026/001¹⁶ requesting all Contractors to provide the following information by 10 February 2026:
- “1) Any incidents, activities or events that may place the Contractor at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses, especially sub-sections 13.2 and 27.2;*
- 2) With respect to section 27 of the standard clauses, any information relating to the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the exploration contract [sic], where 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;*
- 3) Detailed information on the mechanism in place and measures adopted by the Contractor to monitor the activities of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations*

¹⁵ “Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission” dated 21 July 2025 (ISBA/30/C/19).

¹⁶ **Annex 2:** Circular/2026/001 dated 15 January 2026 issued by Ms Leticia Carvalho, Secretary-General of the International Seabed Authority.

under the exploration contract to ensure their compliance with the applicable law referred to in section 27.1 of the standard clauses.”

27. On 9 February 2026, TOML submitted its response to the Authority, providing the Authority with the information requested in Circular/2026/001.¹⁷ TOML confirmed that it is “*fully compliant with its contractual obligations*”, submitting that:
- (a) TOML is not aware of any activities or events that may place it at risk of non-compliance with its contractual obligations;
 - (b) with respect to s. 27 of the Standard Terms of Contract¹⁸, TOML does not have any information relating to TOML itself, its employees, subcontractors, agents, or any persons engaged in working or acting for TOML in the conduct of operations under the Exploration Contract that would give rise to possible non-compliance; and
 - (c) TOML maintains robust mechanisms and measures to monitor the activities of its employees, subcontractors, agents, and all persons engaged in its operations under the exploration contract to ensure their compliance with applicable law.
28. In its 9 February letter, TOML additionally submitted that the July 2025 Council Decision and the Secretary-General’s Circular/2026/001 were unlawful, noting among other things that:
- (a) there is already an established process (ISBA/29/LTC/5)¹⁹, administered by the LTC, for monitoring Contractors’ compliance and identifying instances of non-compliance. Under the LTC’s long-standing practice, the Secretary-General’s role is limited to administrative functions and to transmitting comments between the Commission and Contractors. The Secretary-General is not empowered to assume an active supervisory or monitoring role over activities in the Area and does not have the powers under UNCLOS, the *Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area* (“**Exploration Regulations**”) and the Standard Terms of Contract to make a determination of non-compliance. Accordingly, Circular/2026/001 was *ultra vires* to the powers granted to the Secretary-General under UNCLOS.

¹⁷ **Annex 3:** Letter from TOML to the Authority dated 9 February 2026.

¹⁸ Section 27 of the “Standard clauses for exploration contract” at Annex IV of the *Decision of the Council of the International Seabed Authority relating to amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and related matters* dated 22 July 2013 (ISBA/19/C/17).

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

- (b) In purporting to delegate to the Secretary-General powers to conduct inquiries into Contractors' compliance with their contractual obligations, the July 2025 Council Decision was also unlawful.
29. Notwithstanding the above, TOML made clear that its responses to the Secretary-General's Circular/2026/001 were provided in good faith and otherwise expressly reserved all of its rights and remedies with respect to the July 2025 Council Decision and Circular/2026/001.
30. On 23 February – 6 March 2026, the LTC met for Part I of the 31st Session of the Authority.
31. On 6 March 2026, the LTC issued: (i) the "Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its thirty-first session" (ISBA/31/C/4);²⁰ and (ii) the "Report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations" (ISBA/31/C/4/Add.1).²¹
32. The LTC's Report ISBA/31/C/4 noted at paragraph 12 that the key findings by the LTC in relation to the implementation of the Council's decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations were contained in the addendum, ISBA/31/C/4/Add.1.
33. The LTC's Report ISBA/31/C/4/Add.1 noted among other things:
- (a) at paragraph 3: the Secretariat had received responses from all 21 contractors, and all contractors had informed the Secretary-General that there had been no incidents, activities or events that might place them at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses, especially sub-sections 13.2 and 27.2, and provided the information requested;
- (b) at paragraph 8: *"...During the first part of its thirty-first session, it took into account the elements included in paragraph 10 of the decision within its established process of criteria for identifying contractors (ISBA/29/LTC/5), in order to request additional information from one already identified contractor requiring specific attention for potential inadequate performance. Furthermore, the Commission took into account the elements included in paragraph 10 of the decision in order to identify other contractors that might require specific attention for possible non-compliance arising out of*

²⁰ "Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its thirty- first session" dated 6 March 2026 (ISBA/31/C/4).

²¹ "Report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations" dated 6 March 2026 (ISBA/31/C/4/Add.1).

*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. **One contractor was identified as falling within this category and the Commission requested additional information from it.** The Commission will report to the Council on this issue during the second part of its thirty-first session.”* (Emphasis added)

34. Relevantly, paragraph 8 of the LTC’s Report ISBA/31/C/4/Add.1 suggested that there was at least one contractor who had already been identified as requiring specific attention and additional information had been requested. No express mention was made of TOML as a contractor allegedly requiring “*specific attention*”. However, the report contained references, including through footnote 3 and associated contextual indicators, that enabled TOML to be readily identified as the contractor concerned. This was not incidental. The structure and content of the report demonstrate that the LTC had formed a view as to a specific contractor requiring “*specific attention*” and communicated that identification in a manner that was intelligible to participants within the Authority’s processes. The identification of TOML was therefore a deliberate act of the LTC, notwithstanding the absence of express naming.
35. The manner in which TOML was identified through the LTC’s report is itself inconsistent with the criteria and methodology set out in ISBA/29/LTC/5.²² Under that framework, the identification of a potentially non-compliant contractor forms part of a structured process involving prior engagement with the contractor, the LTC’s assessment against defined criteria, and an opportunity for the contractor to address any perceived deficiencies before any escalation. The LTC’s decision to identify TOML through indirect references in its report, without prior notice, explanation, or engagement, represents a clear departure from that process and underscores the arbitrary and discriminatory nature of the identification.
36. The LTC’s Report ISBA/31/C/4/Add.1 otherwise asserted that the Authority’s inquiry pursuant to the July 2025 Council Decision was “*consistent and in conformity with*” the Convention and the 1994 Agreement.²³
37. On 9-19 March 2026, the Council met for Part I of the 31st Session of the Authority. During the Council’s consideration of the LTC’s reports, no member of the LTC was present to respond to questions or provide clarification regarding the basis upon which any contractor had been identified as requiring “*specific attention*”, unlike prior practice where the Commission has attended Council meetings and engaged

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

²³ “Report of the Legal and Technical Commission on the implementation of the Council’s decision relating to a request for additional information from contractors at risk of non-compliance with their contractual obligations” dated 6 March 2026 (ISBA/31/C/4/Add.1), para. 5.

directly with the Council in explaining its findings.²⁴ Members of the Council, including representatives of sponsoring States, raised questions regarding the process followed by the LTC and the absence of clarity as to the criteria and methodology applied. These concerns were not addressed by the LTC as no LTC member was present.

38. On 16 March 2026, ten days after the LTC issued their 6 March reports, by way of a letter, the Authority notified TOML for the first time and without any prior notice, that TOML had been identified on the basis of paragraph 10 of the July 2025 Council Decision as “*requiring specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the Area*”.²⁵ The 16 March letter then wrote that the LTC wished to ask TOML additional information on the following issues (set out at Annex II to the letter), and required TOML to respond by 31 May 2026:

“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?”

39. On 19 March 2026, following the conclusion of its meeting at Part I of the 31st Session of the Authority, the Council issued the “Decision of the Council relating to the report of the Legal and Technical Commission on the implementation of the Council’s decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations (ISBA/30/C/19)” (ISBA/31/C/18) (“**March 2026 Council Decision**”).²⁶

40. The Recitals to the March 2026 Council Decision noted in relevant part:
- (a) “*Noting that all 21 contractors responded to the Secretary-General’s request and reported no incidents, activities or events that may place them at risk of non compliance, as reflected in ISBA/31/C/4/Add.1*”; and

²⁴ See, by way of example, **Annex 10**, a post from the Authority dated 20 November 2024 on the professional networking platform, LinkedIn, showing the Chair of the LTC attending Council meetings during Part II of the 29th Session of the Authority to present the LTC’s work to the Council in person.

²⁵ **Annex 4**: Letter from the Authority to TOML dated 16 March 2026.

²⁶ “Decision of the Council relating to the report of the Legal and Technical Commission on the implementation of the Council’s decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations (ISBA/30/C/19)” dated 19 March 2026 (ISBA/31/C/18).

- (b) *“Further noting that identification for “specific attention to possible non compliance” as reflected in ISBA/31/C/4/Add.1 is a **preliminary step and does not constitute a finding of non-compliance**” (emphasis added).*
41. The operative paragraphs of the March 2026 Council Decision relevantly provided:
- “3. Takes note of the Commission’s identification of contractors requiring specific attention under section 27 of the Standard clauses and its ongoing requests for additional information and awaits its report on the issue during the second part of its thirty-first session;*
- 4. 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.”*
(Emphasis added)
42. On 22 April 2026, TOML wrote to the LTC with a preliminary response to the Authority’s 16 March letter, seeking confirmation of the procedure that the LTC intended to follow, and requesting further clarification and particulars in respect of the questions raised in the 16 March letter and their legal and factual bases, so that TOML could provide a complete and informed substantive response.²⁷ Further, TOML:
- (a) confirmed that it remained committed to a constructive and good faith engagement with the LTC and the Authority, and requested attendance and participation to be heard at the LTC’s meeting(s) during Part II of the 31st Session, scheduled on 29 June – 10 July 2026; and
- (b) maintained that there was no factual or legal basis for the LTC to identify it as potentially non-compliant, expressly reserved all of its rights, and requested the LTC to respond to TOML’s letter by 8 May 2026. If no response was received from the LTC, TOML would consider that the requests made in its letter were denied.
43. On 13 May 2026, the Authority, through the Chair of the LTC wrote to TOML (by way of a letter received by TOML on 15 May 2026), in which the Chair declined to

²⁷ **Annex 5:** Letter from TOML to the Authority dated 22 April 2026.

substantively respond to the requests made in TOML's 22 April letter, asserting instead that "*it would neither be procedurally appropriate nor feasible ... 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.*"²⁸

44. The Authority's subsequent correspondence of 26 May 2026 confirms that TOML's requests, first made on 22 April 2026, had not been substantively considered by the Commission at the time of that response, but were only thereafter "*forwarded*" and stated to be "*currently under evaluation*".²⁹ This demonstrates that, at the time when TOML was required to respond to the inquiry, the Commission had not substantively engaged with TOML's procedural requests.
45. Furthermore, the Authority, through the LTC, expressly maintained the 31 May 2026 deadline for TOML to respond, notwithstanding its refusal to provide the procedural clarifications, legal bases, and evidentiary materials requested by TOML. This places TOML in the position of being required to respond substantively without being informed of the case TOML must meet. The Authority's reliance on the collective functioning of the LTC does not excuse its obligation to afford procedural fairness at each stage of the inquiry, nor does it reflect the past practice of the LTC and its intersessional working modalities.³⁰
46. The 13 May response wholly failed to comply with the March 2026 Council Decision, having refused to confirm the applicable process for the LTC's inquiry of TOML and denied assurances of due process safeguards at every stage of the inquiry, including with respect to TOML's request to participate in the LTC's meetings on 29 June – 10 July 2026.
47. The 13 May response meant the process of the LTC's inquiry remained unclear and opaque, and TOML's 22 April requests remained unanswered, further demonstrating that the LTC's identification of TOML as a contractor requiring "*specific attention*" was an entirely arbitrary and discriminatory decision.
48. The Authority's conduct also constitutes a failure to perform its contractual obligations in good faith. Section 13.4 of the Exploration Contract provides that the Authority undertakes to fulfil in good faith its powers and functions under the

²⁸ **Annex 6:** Letter from the Authority to TOML dated 13 May 2026.

²⁹ **Annex 8:** Letter from the Authority to TOML dated 26 May 2026.

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

Convention and the 1994 Agreement. By identifying TOML as a contractor requiring “*specific attention*” without prior notice, without disclosure of the factual or legal basis, and by requiring TOML to respond while refusing to provide the requested procedural information and safeguards, the Authority has breached its contractual obligation to exercise its powers and functions in good faith.

49. On 18 May 2026, TOML issued a Notice of Dispute to the Authority pursuant to Part XI, Section 5 of UNCLOS.³¹ TOML formally requested consultations with the Authority 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.
50. In its Notice of Dispute, TOML reaffirmed that it had at all times been willing to engage substantively with the LTC’s inquiry but that the LTC and the Authority’s failure and refusal to provide the further particulars, factual and legal bases, evidentiary materials and procedural assurances requested in TOML’s 22 April letter had prevented its ability to do so.
51. On 26 May 2026, the Authority, through the Secretary-General, wrote to TOML (by way of a letter received by TOML on 27 May 2026, i.e., just two days before TOML’s proposed deadline for consultations): (i) acknowledging the “*concerns raised*”; (ii) asserting that the Authority must “*conduct a thorough legal assessment of the issues presented*” and, on that basis, proposing that consultations “*be initiated at an appropriate time*”; and (iii) noting that the LTC was evaluating how TOML’s 22 April requests “*may be accommodated*.”³² In other words, the Authority acknowledged that these matters remained unresolved at the time when TOML was required to respond to the inquiry, and are only now said to be under consideration.
52. Crucially, the 26 May letter: (i) failed to set out any concrete timetable or procedural steps for the Authority’s substantive engagement and consultations with TOML; (ii) did not address the substance of the issues raised in TOML’s 18 May Notice of Dispute; and (iii) did not relieve TOML of its obligation to respond to the LTC’s questions (set out in the Authority’s 16 March letter) by 31 May 2026.
53. To date, the Authority has not substantively engaged with TOML in relation to the issues set out in the Notice of Dispute.

³¹ **Annex 7:** Letter from TOML to the Authority dated 18 May 2026 containing Notice of Dispute.

³² **Annex 8:** Letter from the Authority to TOML dated 26 May 2026.

Chapter 4

Decision and Remedies Sought

54. For these reasons, while reserving the right to supplement and amend this Application as appropriate in the course of the proceedings, TOML asks 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 22 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.

Chapter 5

Provisional Measures

55. On or about the date of the filing of this Application instituting proceedings before the Chamber, TOML will institute a request for provisional measures in accordance with Article 290, paragraph 1, of UNCLOS. The arguments set out in the aforementioned request for provisional measures are reproduced by reference in the present Application, as if they were set out in full.

Chapter 6

Appointment of Agent

56. Pursuant to Article 56(2) of the Rules of the Tribunal, Mr Nathan Eastwood of Watson Farley & Williams has been appointed by TOML as its Agent for the purpose of all proceedings in connection with this Application.

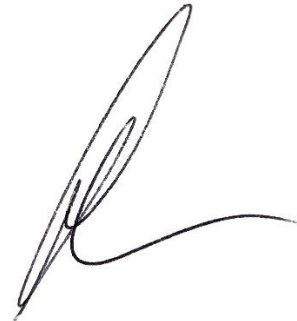
57. Mr Eastwood's contact details are as follows:

Mr Nathan Eastwood
Watson Farley & Williams
Level 12.01, 111 Elizabeth Street
Sydney, New South Wales, Australia, 2000
neastwood@wfw.com

58. The address for service to which all communications concerning the case are to be sent in accordance with Article 56(1) of the Rules of the Tribunal is as follows:

Mr Nathan Eastwood
Watson Farley & Williams
Neuer Wall 88
20354 Hamburg, Germany

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized capital 'R' followed by a horizontal line extending to the right.