



## Council

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Agenda item 20

### Report of the Secretary-General on incidents in the NORI-D contract area of the Clarion Clipperton Zone

## Incidents in the NORI-D contract area, 23 November to 4 December 2023

### Report of the Secretary-General

#### I. Introduction

1. The present report is provided to facilitate an invitation extended to the Council by the President and the vice-presidents of the twenty-eighth session of the Council, contained in a [statement](#) issued on 15 December 2023<sup>1</sup>, to address certain incidents in the NORI-D Contract Area. On 15 February 2024, the President further invited the Secretary-General to share any additional information that may be useful in this respect (including in relation to other contracts). The present report does not substitute, and should be read in conjunction with the Secretary-General's reports to the Council dated 4 December 2023 (the "[Interim Report on Immediate Measures](#)"<sup>2</sup> or "Interim Report") and 12 January 2024 (the "[Second Report on Immediate Measures](#)"<sup>3</sup> or "Second Report"), which addressed the implementation of immediate measures promulgated by the Secretary-General on 27 November 2023 in accordance with Regulation 33 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area<sup>4</sup>. Those reports dealt in particular with the legal basis of, and the circumstances justifying the promulgation of immediate measures on 27 November 2023. These detailed points are not repeated hereunder.

2. In accordance with Article 162(2)(a) and (l) of the United Nations Convention on the Law of the Sea (the "Convention"), it is within the responsibility and power of the Council to carry out the supervision of activities in the Area. It is the responsibility of the Secretary-General to assist the Council in carrying out this supervision, and specifically to transmit to the Council information

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<sup>1</sup> <https://www.isa.org.jm/wp-content/uploads/2024/02/Joint-Statement.pdf>

<sup>2</sup> [https://www.isa.org.jm/wp-content/uploads/2024/01/SG\\_Report\\_to\\_the\\_Council\\_on\\_the\\_Immediate\\_Measures.pdf](https://www.isa.org.jm/wp-content/uploads/2024/01/SG_Report_to_the_Council_on_the_Immediate_Measures.pdf)

<sup>3</sup> [https://www.isa.org.jm/wp-content/uploads/2024/01/Second\\_report\\_of\\_the\\_SG\\_on\\_the\\_immediate\\_measures.pdf](https://www.isa.org.jm/wp-content/uploads/2024/01/Second_report_of_the_SG_on_the_immediate_measures.pdf)

<sup>4</sup> ISBA/19/A/9; ISBA/19/C/17.

obtained by the Secretary-General in connection with events that may require action on the part of the Council. Allegations to the effect that the rights of contractors holding exclusive rights of exploration pursuant to contracts with the Authority may have been interfered with; or information indicating that the rights or interests of the Authority may have been interfered with are events which the Secretary-General is compelled to report to the Council. At the same time, as the chief administrative officer of the Authority, it is the responsibility of the Secretary-General to act promptly and efficiently in the interests of the Authority and to protect the Authority's rights.<sup>5</sup>

## **II. The incidents reported by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd**

3. Since 23 November 2023, the Secretariat received several reports from Nauru Ocean Resources Inc. ("NORI") and Tonga Offshore Mining Ltd ("TOML") concerning the conduct of Greenpeace International ("Greenpeace"), and its representatives using the vessel *Arctic Sunrise*. These reports consistently and repeatedly requested the Authority to take steps in the face of what was described as an "interference" with the rights of NORI and TOML under their respective exploration contracts concluded with the Authority. To recall, these contracts are:

- the contract for exploration for polymetallic nodules between the Authority and NORI dated 11 January 2012 (the "NORI exploration contract"); and
- the contract for exploration for polymetallic nodules between the Authority and TOML dated 11 January 2012 (the "TOML exploration contract").

4. Pursuant to the NORI exploration contract, NORI is entitled to carry out exploration activities in the NORI-D contract area (which is defined in Schedule 2 of the NORI exploration contract with reference to coordinates). In this context, and consistent with its contractual rights and obligations, starting on 11 November 2023, NORI conducted a series of scientific activities as part of its programme of work for exploration in the NORI-D contract area. These activities were carried out in accordance with NORI's contract, with the stated objective of implementing various requests from the Legal and Technical Commission and to obtain scientific data and information the Commission deemed to be necessary for the work of the Authority. In particular, the requests of the Commission concerned post-disturbance monitoring following the testing of a polymetallic nodule collector authorized after the environmental impact statement in 2022<sup>6</sup>.

5. The Secretary-General understands that TOML has entered into a partnership with NORI for the purposes of carrying out this activity, with a view to collecting scientific data relevant to TOML's exploration activities pursuant to the TOML exploration contract. Accordingly, the activity in question was also an integral part of TOML's programme of work under its contract.

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<sup>5</sup> This is fully in line with the general principle of the international law of intergovernmental organizations, recognized by the Permanent Court of International Justice in its advisory opinion of 1926 on the competences of the International Labour Organization and reiterated several times by the International Court of Justice, pursuant to which implied competences exist where the exercise of such competences is necessary for an organ to carry out its mandate and discharge its responsibilities. *Competence of the ILO to Regulate Incidentally the Personal Work of the Employer*, PCIJ Publications 1926, Series B, no. 13, p. 18; *International status of South-West Africa*, Advisory Opinion, ICJ Reports 1950, p. 128, at p. 137.

<sup>6</sup> <https://www.isa.org.jm/news/isa-legal-and-technical-commission-concludes-its-review-environmental-impact-statement/>

6. NORI and TOML both informed the Secretariat that, between 23 November 2023 and 4 December 2023, representatives of Greenpeace consistently and repeatedly interfered with the operation of the vessel *MV Coco*, which NORI and TOML used for the purposes of their exploration activities. The reports from NORI and TOML have been provided to the Council and are appended to the Second Report. According to the reports from NORI and TOML, the conduct of Greenpeace representatives included:

- a. Positioning the *Arctic Sunrise* in the immediate vicinity of the *MV Coco* (within a distance of less than 100m) despite warnings from the master of the *MV Coco*, and repeatedly pressing Greenpeace's fast rescue watercraft against the hull of the *MV Coco*;
- b. A total of four Greenpeace representatives climbing on board the *MV Coco* without authorization from the master and refusing to disembark for around five days, preventing the deployment of equipment NORI intended to use in implementing its programme of activities and creating serious safety hazards for the crew on board the *MV Coco* and for them as well;
- c. Positioning Greenpeace's watercraft directly below the launch point of the remotely operated underwater vehicle on the *MV Coco* to prevent any deployment of scientific equipment, further aggravating safety hazards with the consequence that the equipment could not be operated; and
- d. Consistently ignoring calls from the captain of the *MV Coco*, addressed to the crew of the *Arctic Sunrise*, requesting the latter to maintain a safe distance from the *MV Coco* and cease interference with its operations and refusing to comply with the interim measures issued by the Secretary-General.

7. According to NORI and TOML, the interference caused by Greenpeace had the consequence of preventing NORI and TOML from proceeding with their respective activities in accordance with their respective plans of work and intended schedule. According to NORI and TOML, this has caused substantial, quantifiable damages. Greenpeace eventually left the NORI-D Contract Area on 4 December 2023, shortly after the transmission of the Interim Report to the Members of the Council.

### **III. The treatment of NORI's allegations by the Authority to date**

8. Once in receipt of NORI's first notification of the alleged conduct of Greenpeace on 25 November 2023, the Secretary-General promptly solicited comments from Greenpeace on the allegations received (which were supported by video, photo and audio recordings) on 26 November 2023. On 27 November 2023, Greenpeace responded to the Secretary-General that it had been conducting a "peaceful protest at sea", which Greenpeace claimed to be its right, against *inter alia* the fact that "NORI has announced, publicly and repeatedly, that it intends to apply for a plan of work next year, irrespective of the outcome of their science work of the negotiation process taking place at the ISA, [which] is a testament to the intentions of the company: to extract resources from the global commons irrespective of the harm to the marine environment".

9. Having carefully considered the communications of Greenpeace, for the reasons explained in more detail in the Interim Report and the Second Report, which are already before the Council, on 27 November 2023, the Secretary-General promulgated interim measures of a temporary nature (the "Immediate Measures"). The Council is referred in particular to paragraphs 3 to 10 of the Interim Report and paragraphs 17 to 18 of the Second Report, for detailed explanations as to the rationale for, and circumstances of, the promulgation of interim measures. The Secretary-General recalls that the Immediate

Measures were intended to call for and facilitate the swift and efficient resolution of the situation unfolding in the NORI-D contract area, and their purpose was not to impose “orders” on any party. The Secretary-General, as the chief administrative officer of the Authority, is fully entitled to call upon any party causing interference with contractual rights granted by the Authority to cease such interference. This is necessary (a) in order to preclude any suggestion that the Authority has failed to act in accordance with its obligations under exploration contracts and (b) to protect the rights and interests of the Authority at all times.

10. In response to the promulgation of Immediate Measures, Greenpeace, in a letter dated 28 November 2023, expressly contested the competence of the Authority, and unequivocally indicated that Greenpeace would not comply with the Immediate Measures. Greenpeace has not provided any further reports. NORI and TOML have provided repeated updates to the Authority as to the developments in the NORI-D contract area, up until conclusion of the actions of Greenpeace on 4 December 2023.

11. NORI also reported to the Authority the legal proceedings it commenced before the courts of the Kingdom of the Netherlands against Greenpeace, on 27 November 2023. The proceedings culminated in a Decision of the Amsterdam District Court on 30 November 2023 (the “Court Decision”). The Court Decision indicated that the purpose of NORI’s application to the Amsterdam District Court was to obtain immediate relief against Greenpeace and put an end to its interference. The Secretary-General draws the attention of the Council in particular to the following points of the Court Decision:

a. The Court Decision confirms that the conduct of Greenpeace gave rise to safety hazards;

b. The Court Decision indicates that Greenpeace made misrepresentations to the Amsterdam District Court, and concealed the fact from the Court that the Secretariat solicited comments from Greenpeace on NORI’s allegations before promulgating the Immediate Measures. The Interim Report addresses this point in more detail at paragraph 24.

c. While the Court Decision partially upheld NORI’s application, and ordered Greenpeace representatives to disembark from the *MV Coco*, the Court agreed with Greenpeace in that Greenpeace is entitled to continue its protest. The Court did not specify the distance Greenpeace shall maintain from the *MV Coco*. This finding rests on the implied premise that the Amsterdam District Court has jurisdiction over alleged protests interfering with activities in the Area. While NORI’s application to the Amsterdam District Court, subject to the relevant rules of Dutch law, may be regarded to consent to such jurisdiction, it is concerning that the Amsterdam District Court did not address the issue of the Authority’s competence over the matter at length. To the extent the Court Decision touches upon the role of the Authority, its position appears to be thinly reasoned and vague. The Secretary-General invites the Council to consider the implications of the Decision, in the light of the relevant provisions of the Convention conferring upon the Authority the competence to control activities in the Area.

d. The Court Decision contains references to the European Convention on Human Rights (“ECHR”), and appears to have accepted, in part, the arguments of Greenpeace to the effect that the Court had to apply the ECHR to a situation where activities in the Area are interfered with in the context of an alleged protest.

12. Greenpeace has recently raised a number of arguments in respect of the Court Decision, which are addressed below in a separate section.

13. In order to solicit further information on the matter, the Secretary-General informed the Kingdom of the Netherlands (the flag State of the *Arctic Sunrise* and the jurisdiction where the headquarters of Greenpeace is located) and the Kingdom of Denmark (the flag State of the *MV Coco*) of the events described in the communications from NORI and TOML. In correspondence dated 26 November 2023, 28 November 2023, 30 November 2023 and 1 December 2023, the Secretary-General repeatedly invited the Kingdom of the Netherlands to provide information to the Authority as to what steps, if any, it had taken in its capacity as the flag State of the *Arctic Sunrise*. In this correspondence, the Secretary-General referred in particular to Articles 87(2), 94 and 147(3) of the Convention. On 15 December 2023, the Kingdom of the Netherlands provided its response, referred to the Court Decision, and emphasized that it had raised the matter with Greenpeace.

14. The Secretariat has not received any additional information on this matter since 15 December 2023, apart from a recent communication from Greenpeace. In their latest communications, NORI and TOML both reiterated the request that the Authority consider their reports and take necessary steps. On 21 February 2024, Greenpeace provided a number of comments on the Interim Report and the Second Report.

15. On 15 December 2023, the President and the Vice-Presidents of the Council issued a [joint statement](#) on the incidents in the NORI-D Contract Area, calling upon Greenpeace to refrain from future actions that could disrupt the contractual activities of NORI on board its vessels or in its contract area; and inviting the Council to address the incidents in the NORI-D contract area during Part I of the 29<sup>th</sup> session of the Authority.<sup>7</sup>

#### **IV. The observations of Greenpeace on the Immediate Measures, the Interim Report and the Second Report**

16. In its letter of 21 February 2024, Greenpeace reiterated its position that, between 22 November 2023 and 4 December 2023, it had exercised its right to protest at sea. Greenpeace emphasized its past experience and “professionalism” in conducting safe demonstrations, and repeatedly underlined that its activities were “safe”. While Greenpeace did not purport to rebut the details of the factual account presented in NORI’s and TOML’s communications to the Authority, Greenpeace strongly contested the suggestion that its conduct had fallen short of applicable safety standards. Greenpeace further maintained that vessels conducting activities in the Area should not be entitled to safety zones, purporting to draw a distinction between such vessels and installations (such as scientific research installations).

17. Greenpeace also criticized the promulgation of Immediate Measures and further elaborated on the legal arguments it had briefly raised in its previous letter dated 28 November 2023. In this regard, it is to be recalled that, despite the call of the Secretary-General for daily updates from NORI and Greenpeace following the promulgation of Interim Measures, Greenpeace denied any competence of the Secretary-General on the matter and hence, did not submit any daily reports. Accordingly, the fact that Greenpeace now levies criticism for not attaching its correspondence to the Interim Report or the Second Report is difficult to understand. The Secretary-General would have transmitted any detailed reports from Greenpeace if Greenpeace had provided such reports, as the

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<sup>7</sup> <https://www.isa.org.jm/wp-content/uploads/2024/02/Joint-Statement.pdf>

Immediate Measures called upon Greenpeace to do so. In light of the refusal by Greenpeace to provide reports as to what transpired during its supposed “*protest*”, the Secretary-General was not in a position to append any detailed factual account from Greenpeace to the Interim Report or the Second Report, as the only detailed reports were provided by NORI and TOML.

18. In its 21 February 2024 communication, Greenpeace stated that the exercise of its “right to protest” had been carried out in accordance with applicable laws and had been sanctioned by the Decision of the Amsterdam District Court of 30 November 2023 (which has been addressed above). Greenpeace appears to construe the Court Decision as authority to the effect that the Immediate Measures lacked legal basis or legal effect. In this respect, the Secretary-General disagrees with the interpretation of the Court Decision advanced by Greenpeace. The Court Decision disposed of the matter as between NORI and Greenpeace, upon NORI’s application and submission to the jurisdiction of the Court, but the Authority was not party to the proceedings culminating in the Court Decision. Consequently, the measures of the Authority could not have formed, and did not form, the subject matter of the proceedings before the Amsterdam District Court. In any event, the courts of Member States do not have jurisdiction to adjudicate on the measures of Authority or its organs (let alone in circumstances where the Authority or its organs do not even participate in any capacity in the court proceedings), nor to sanction conduct that interferes with the rights and interests of the Authority. Consequently, the Amsterdam District Court had no jurisdiction to make any pronouncement as to whether the Immediate Measures had legal basis or carried legal effects.

19. Greenpeace reiterated that it is not bound by the measures of the Secretary-General, as it is neither a contractor, nor a State party to the Convention. The Secretary-General notes that the Regulations on prospecting and exploration for polymetallic nodules in the Area<sup>8</sup> do not impose any *a priori* constraint on the categories of immediate measures which the Secretary-General may promulgate, nor on the legal effect of such immediate measures. Contrary, therefore, to the suggestions of Greenpeace, the Secretary-General had the authority to promulgate the Immediate Measures and to address certain provisions of the Immediate Measures specifically to Greenpeace considering the interference caused to the rights and obligations pertaining to the contract signed between the Authority and NORI.

## **V. Additional issues arising in relation to the recent incidents**

20. In accordance with a request by the President of the Council dated 15 February 2024, the Secretary-General refers the Council to previous incidents taking place beyond national jurisdiction when Greenpeace expressed opposition to activities carried out in the Area pursuant to contracts signed by the Authority with different contractors.

21. On 6 April 2021, Greenpeace representatives on board the vessel *Rainbow Warrior* conducted a protest in the Clarion-Clipperton Zone, in the NORI-D contract area. This protest entailed the use of banners expressing objections to activities in the Area. The protest was conducted in the vicinity of the vessel *Maersk Launcher*, operated by NORI. NORI conducted its activities in accordance with the NORI exploration contract.

22. In April 2021, Greenpeace representatives conducted a protest during the testing of mining equipment by the vessel *Normand Energy*, operated by Global Sea Mineral Resources (“GSR”) in the Clarion-Clipperton Zone. GSR conducted these activities in accordance with its contract with the Authority dated 14 January 2013. On 20 April 2021, Greenpeace representatives approached the *Normand Energy* in order to paint on the side

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<sup>8</sup> ISBA/19/A/9; ISBA/19/C/17.

of the vessel, despite warnings from the master of the vessel to refrain from doing so, while the mining equipment was deployed during its testing.

23. In addition to these events in the Area, the Secretariat understands that Greenpeace conducted additional protests to express opposition to activities in the Area, staging such protests even in areas falling under national jurisdiction. These included Greenpeace representatives boarding the vessel *Hidden Gem*, without authorization of the master or the contractor, operated by NORI in the context of its exploration activities in accordance with the NORI exploration contract, on 28 September 2023, in Manzanillo Bay, Mexico.

24. The most recent protests in 2023 (including the incidents subject to this report) represent a marked escalation in terms of interference with contractors' activities.

## **VI. Recommendations**

25. The Council is invited to take note of the content of this report.