



# **INTERNATIONAL SEABED AUTHORITY**

## **JOINT APPEALS BOARD**

**ISBA/JAB/JOINT APPELLANTS/2025**

**Khalilah Hackman,  
Jonathan Hall,  
Giovanni Ardito  
David Pusztai  
(the "Appellants")**

**v.**

**Secretary-General of the International Seabed Authority  
(the "Respondent")**

### **Decision of the Panel relating to an application for suspension of action by the Appellants**

#### **Background and Procedural History**

1. On 7 January 2025, the Appellants filed a joint application before the Joint Appeals Board ("JAB") requesting suspension of action on the decisions made by the Respondent, dated 2 January 2025, which the Appellants characterized as "arbitrary and unjustified decisions to unilaterally terminate their appointments [...] (the "Purported Withdrawals")". They argue that, although the 2 January 2025 letters did not specify the date on which the impugned decision would take effect, they stipulated a period of 10 days during which the Appellants could contact Human Resources ("HR"). The Appellants argued that the contested decisions had not



yet been implemented at the time of their filing but would be completed within the referred 10-day period, “following which the termination would therefore be deemed complete”. They also argued that such an implementation would cause irreparable harm.

2. In their application, the Appellants sought specifically: (a) a stay of any steps to withdraw their appointments; (b) the continuation of their onboarding process; (c) the restoration of the Inspira profiles and email access of the two former International Seabed Authority (“ISA”) staff members; (d) a halt to the recruitment for the positions to which they had been appointed in December 2024; and (e) a prohibition of any reclassification or restructuring of these posts.

3. Between 7 January 2025 and 15 January 2025, the Appellants raised urgent concerns regarding the status of their suspension of action application before the JAB. They sought updates on the handling of their request and clarification on procedural matters. On 15 January 2025, the former Chair of the JAB informed the Appellants that he was no longer in office. This prompted them to seek immediate clarification from the JAB and its Secretariat regarding the timing of the leadership change, its impact on their pending appeal, and the reasons for the lack of prior notification. Their correspondence also raised concerns about procedural irregularities, potential discrimination, and the perceived inaction of the JAB, urging prompt measures to ensure adherence to established rules and past practices. They further requested that all related communications be preserved.

4. On 23 January 2025, the Secretary-General issued ISBA/ST/SGB/2020/1/Amend.3, further amending the Staff Rules of ISA, to significantly enhance the judicial powers of the JAB, which had been strengthened by Amend. 1. Both of these amendments grant the JAB the authority to: a) issue binding orders to the Secretary-General regarding suspension of action; b) decide appeals in disciplinary cases, instead of referring them to the United Nations Appeals Tribunal (“UNAT”) in the first instance; c) exercise full judicial independence in reviewing administrative decisions.

5. Also on 23 January 2025, the new membership of the JAB was established through Information Circular ISBA/ST/IC/2025/3.

6. On 31 January 2025, the Secretariat of the JAB (the “JAB Secretariat”) transmitted the suspension of action application to the Secretary-General, with a deadline of 7 February 2025 for a response.



7. Also on 31 January 2025, the JAB Secretariat informed the Appellants that their request of 7 January 2025 would be considered by the newly constituted JAB in accordance with its rules of procedure.

8. On 3 February 2025, the Appellants informed the JAB Secretariat that the UNAT had taken jurisdiction over their request for interim relief due to the failure of the JAB to act within the prescribed timeframe. They expressed their expectation that the matter would be determined by the UNAT, rather than by the JAB.

9. Also on 3 February 2025, a request for clarification was sent by the JAB Secretariat to the Appellants as to whether they were formally withdrawing their requests for suspension of action before the JAB.

10. On 5 February 2025, the Appellants reiterated that a decision by the UNAT on their motion for interim relief would be instructive for both the JAB and the Appellants in determining the way forward, without prejudice to a future application on the merits of the matter. The Applicants also requested disclosure of correspondence between the JAB Secretariat and the former JAB Chair between 7 January and 23 January 2025, as well as the name of the individual acting as JAB Secretary.

11. Also on 5 February 2025, the new Chair of the JAB constituted a Panel to consider the application for suspension of action, after obtaining the consent of the respective Panel members.

12. On 7 February 2025, the Respondent++++ requested an extension until 11 February 2025 for submitting a response to the application for suspension of action, citing requirements to respond simultaneously to two UNAT orders, deriving from motions from the Appellants, for interim measures by 7 February 2025 and the resulting workload on the small legal team.

13. On 10 February 2025, the Chair of the Board, noted the Appellants' contention that the JAB lacks jurisdiction and that the UNAT decision will take precedence over the JAB decision. Notwithstanding the Appellants' concerns regarding the JAB's jurisdiction, and taking into account the recent amendment to the Staff Rules, the recent appointment of the new Chair and Members of the JAB, the recent constitution of the Panel, as well as the complexity and volume of the case, and in the interest of ensuring a thorough and properly considered assessment of the issues, the requested extension until 11 February 2025 was granted exceptionally.



14. On 11 February 2025, the Respondent filed her reply to the requests for suspension of action, with annexes.
15. Also on 11 February 2025, the JAB Secretariat transmitted the reply of the Respondent together with its annexes for the Appellants to comment on by 20 February 2025, to which they replied on 12 and 15 February 2025.
16. On 13 February 2025, the JAB Secretariat transmitted documents relating to the alleged restructuring and reclassification of roles within the Secretariat, which had been submitted by the Respondent at the direction of the JAB, to the Appellants to comment on by 20 February 2025.
17. On 19 February 2025, the UNAT dismissed the Appellants' application for suspension of action as moot. On the same day, the Appellants submitted a request for an extension of the deadline for comments until 24 February 2025. Noting, inter alia, that the Appellants had had ample opportunity to present their arguments, the JAB denied the request for an extension of time.
18. The Appellants submitted their comments on 20 February 2025.

### **Summary of the SOA Application**

19. The Appellants challenge the Respondent's decision to unilaterally withdraw their fixed-term appointments. These appointments, granted following competitive selection processes, were effective from 1 January 2025. The Appellants argue that the withdrawal of their appointments, communicated on 2 January 2025, constitutes an unlawful termination without due process, as they were not provided with an opportunity to be heard, nor was there any evidence justifying their removal.
20. The Appellants seek relief from the JAB, which includes the suspension of the decision to withdraw their appointments, immediate continuation of their onboarding process, restoration of their access to official email and the Inspira recruitment platform, prohibition on recruiting new personnel for their positions while the matter is under review, and prohibition on restructuring or reclassifying their positions during the resolution of the dispute. They invoke Rule 11.2(c) of the ISA Staff Rules, claiming that the decision is *prima facie* unlawful



due to a failure to comply with the Authority's Staff Rules and international administrative law principles. They argue that the withdrawal decision will cause irreparable harm, including financial instability, career disruption, and reputational damage, and assert that the Respondent's actions were arbitrary and procedurally flawed.

21. The Appellants argue that their appointments were binding employment contracts, and that the withdrawal constitutes a violation of employment law, due process, and legal certainty. They further point to contradictions in the Respondent's statements, such as an admission that the recruitment process was procedurally compliant. They request the immediate intervention of the JAB to prevent the irreversible harm that will result from the contested decision pending full review.

### **Summary of the Reply of the Respondent**

22. In its reply, the Respondent requests that the JAB dismiss the Appellants' request for suspension of action, presenting six main arguments. First, the Respondent asserts that the contested decision has already been implemented as of 3 January 2025. Since the Appellants are not currently in service and have no assigned duties, the request to suspend action is legally unsustainable, as suspension cannot reverse a decision that has already been executed.

23. The Respondent argues that the Appellants have not demonstrated irreparable harm, as required by ISA Staff Rule 11.2(c)(ii). Economic loss alone does not constitute irreparable harm, and the Appellants' focus on past harm rather than the risk of future irreparable harm does not meet the legal threshold for suspension of action.

24. The Respondent contends that the request should be dismissed since the appointments have already been withdrawn, the decision has already been implemented, and there is no urgency for suspension, as required by UNAT case law for requests for suspension of action.

25. The relief sought by the Appellants exceeds the jurisdiction of the JAB, the Respondent argues. There is no legal basis to reinstate an onboarding process that was not completed following due process, nor is there an administrative decision to review regarding the restoration of Inspira profiles or email access. Additionally, the Appellants have been informed that they will be shortlisted for future recruitment if the same positions are re-advertised, and



several positions, including those previously held by the Appellants, have already been restructured and reclassified, making the request for prohibition of such actions moot.

26. The Respondent asserts that the contested decisions are *prima facie* lawful, as the withdrawal of the appointments was a necessary corrective measure to address procedural violations by the former Secretary-General. The recruitment process was irregular and violated ISA Staff Rules hence, the Respondent acted within her legal authority to rectify these issues.

27. Finally, the Respondent questions the good faith of the Appellants. The Appellants were aware of the imminent transition between Secretaries-General and the concerns surrounding the recruitment process. They also knew that the appointments were signed by the former Secretary-General despite internal objections, raising concerns about their motivations in pursuing the appointments and subsequent appeals.

28. The Respondent seeks the dismissal of the Appellants' request for suspension of action in its entirety, as it does not meet the criteria required for exceptional interim measures under ISA Staff Rule 11.2(c)(ii).

### **Considerations of the JAB**

29. The Panel of the Joint Appeals Board has been constituted to consider the application for suspension of action filed on 7 January 2025 by the Appellants pursuant to Rule 11.2(c) of the Staff Rules of ISA.

30. The Appellants were granted fixed-term appointments, which were withdrawn shortly after they took effect, meaning they were effectively prevented from assuming their roles. Therefore, the Appellants challenge the Respondent's decision, dated 2 January 2025, to withdraw their letters of appointment. They seek interim relief in the form of a suspension of action and additional protective measures related to recruitment and restructuring.

31. The JAB will determine the present appeal for suspension of action in a joint manner.



## **General Legal Framework and the Transitional Period: The Role of the JAB**

32. As stated, ISBA/ST/SGB/2020/1/Amend.3, issued on 23 January 2025, amended the Staff Rules of ISA to significantly enhance the judicial powers of the JAB, which had already been strengthened by Amend. 1. These amendments grant the JAB the authority to: (a) issue binding orders to the Secretary-General regarding suspension of action; (b) decide appeals in disciplinary cases, instead of referring them to UNAT in the first instance; and (c) exercise full judicial independence in reviewing administrative decisions.

33. The consolidated amendments to the Staff Rules of the ISA introduce key changes that enhance JAB judicial authority in order to bring these closer in line with the internal justice system of the United Nations. Specifically, these amendments: (i) affirm the JAB's full judicial authority under Amendments 1 and 3; (ii) empower the JAB to order, rather than merely recommend, the suspension of action in accordance with Amendment 3; (iii) remove the Secretary-General's final decision-making power over appeals; (iv) reinforce the binding nature of JAB decisions to ensure compliance; and (v) provide greater clarity regarding procedures for appeals, panel composition, and representation.

34. These changes align with international standards, particularly Article 2(10) of the UNAT Statute, as also reflected in its jurisprudence<sup>1</sup>. Under a special agreement, concluded on 11 February 2010, the ISA accepted the jurisdiction of the UNAT. Accordingly, the JAB, akin to the United Nations Dispute Tribunal ("UNDT") within the United Nations internal justice system, must possess the authority to issue binding decisions rather than mere recommendations, ensuring the effective functioning of the administrative justice system.

35. However, while the JAB has been granted judicial authority and shares similarities with the UNDT, it remains distinct from it in a fundamental way: it is not a first-instance judicial body within the United Nations internal justice system. Instead, the JAB functions as an adjudicatory mechanism within the ISA, operating under a separate legal framework and jurisdiction. This distinction is crucial in understanding why the JAB must exercise judicial independence similar to the UNDT while not being bound by all of the same structural and procedural

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<sup>1</sup> See, v.g., 2021-UNAT-1117 (*Fogarty*); 2021-UNAT-1089 (*Nguyen*); and 2022-UNAT-1192 (*Webster*).



constraints. The reference to the JAB being “akin” to the UNDT reflects the requirement that it must uphold principles of fairness, impartiality, and judicial independence in administrative decision-making, consistent with international standards. However, unlike the UNDT, which operates as an organ of formal adjudication within the United Nations justice system, the JAB serves as the principal mechanism for resolving employment disputes at the ISA level before recourse to the UNAT.

36. This distinction is particularly relevant in response to the concerns raised regarding the appointment of the Chair and other newly appointed members of the JAB. The Appellants cited the UNDT Statute in arguing that these appointments were improper, but the correct reference should have been to Article 3.6 of the UNAT Statute, which states:

A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his or her term of office.

37. In this regard, it should be noted that the appointments in question were made following the relevant amendments to the Staff Rules of the ISA, which conferred judicial authority upon the JAB, allowing it to issue binding determinations rather than mere recommendations. Consequently, the nature of these roles falls within the scope of judicial appointments rather than administrative or staff positions. Furthermore, Article 3.6 of the UNAT Statute applies strictly to appointments within the United Nations system. Given that the ISA operates under a separate legal framework, and that JAB members are not United Nations staff members, the restriction in Article 3.6 does not extend to appointments within the JAB. The purpose of this prohibition is to prevent former UNAT judges from assuming administrative or staff roles within the United Nations, not to preclude their participation in independent judicial bodies of international organisations operating under distinct mandates.

38. Accordingly, the concerns raised regarding the legitimacy of the JAB’s composition do not take into account the legal distinction between the United Nations internal justice system and the ISA’s independent adjudicatory framework. The recent amendments to the ISA Staff Rules ensure that the JAB functions with the necessary judicial independence and authority, in accordance with international legal standards.

39. On another note, the JAB notes that while there was a delay in processing the request for suspension of action during the transitional period, this does not constitute a violation of



Rule 14 of the Rules of Procedure of the JAB. Rule 14 states that the Panel shall "normally" be constituted within one week of receiving the request. However, the transitional period, marked by structural adjustments to the JAB, was not a normal situation but rather an exceptional circumstance. Given the nature of these changes, the usual timeframe could not be strictly adhered to.

40. After having been informed of the reconstitution of the JAB on 31 January 2025, the Appellants communicated with the JAB Secretariat on 3 February 2025, informing that they had submitted a request for interim relief before UNAT, in response to the JAB's delay in handling the request for suspension of action. The Appellants expressed their expectation that the matter would now be handled by UNAT, rather than the JAB. They also clarified that their request before the JAB remained valid and did not prejudice their right to challenge the contested decision through the internal mechanisms of the ISA.

41. The Panel recognizes the concerns expressed by the Appellants regarding the timeliness of this decision but notes that the leadership transition does not hinder the JAB's ability to address the Appellants' claims. The JAB was reconstituted with a new Board, appointed on 23 January 2025, the same date of Amendment 3 to the ISA Staff Rules. The Board is now in its full capacity to issue the present decision, after having respected the prescribed time limits and guaranteed equal treatment to the parties.

42. Notwithstanding the above, the JAB acknowledges the delay of the Secretariat in acknowledging receipt of the request for suspension of action during the transitional period, which created the impression of a procedural vacuum for the Appellants. This delay also pertains to the lack of timely information regarding the restructuring of the JAB. The JAB takes note of these concerns and suggests that such delays be avoided by the Secretariat in the future to ensure the timely and transparent handling of proceedings and information by the Secretariat.

43. The Panel has carefully reviewed the correspondence from the Appellants dated 12, 13, and 14 February 2025, including the concerns raised regarding the composition of the JAB, disclosure of documents, and procedural transparency. The Panel acknowledges the Appellants' reservations about the shared folder for document transmission, but considers that the shared folder, as managed by the JAB Secretariat, suffices for procedural notification purposes under Rule 5 of the JAB Rules of Procedure, provided that the parties are promptly notified of new uploads. Furthermore, the Panel notes the Appellants' objections regarding the disclosure of the



Alleged Restructuring Documents and the request for the native versions of such documents. However, the Panel finds no demonstrable prejudice resulting from the format of disclosure, particularly in the context of a request for suspension of action, where the merits of the case are not assessed. Furthermore, in light of the principle of “pas de nullité sans grief”, the Respondent is not required to comment further on the annexes submitted by the Appellants.

44. The Panel further confirms that Ms. Tamanna Khan is the current Secretary of the JAB, and the other individuals mentioned in the submissions have no role in these proceedings.

45. The Panel will determine the appeal for suspension of action based on its own competence, independent of the UNAT jurisdiction, which falls exclusively within the purview of the UNAT itself, in accordance with Article 2(10) of the UNAT Statute.

### **Specific Legal Framework: Requests for Suspension of Action**

46. Rule 11.2(c) of the Staff Rules of the ISA, as it now reads, establishes in relevant part that the filing of a request for administrative review or an appeal before the JAB does not automatically suspend action on the contested decision. However, the staff member concerned may request a suspension of action by submitting a written request to the JAB, demonstrating that: (a) the contested decision has not been implemented, and (b) its implementation would result in irreparable injury to the Appellant. Upon receipt of such a request, a panel of the JAB shall be promptly constituted and shall act expeditiously. If the above conditions are met, the panel may order the Secretary-General to suspend action on the contested decision, and the Secretary-General is legally bound to comply.

47. Rule 11.2(d) and (e) further regulate the procedural aspects of appeal, including: (a) the formal filing of appeals and requests for suspension of action; (b) the composition of JAB panels, which include a Chair, a member appointed by the Secretary-General, and a member elected by the staff; (c) exclusions for panel membership, such as disqualifying any individual who has participated in prior conciliation efforts.

48. In the present case, the Panel will not address the substance of the claim but will restrict its assessment to the request for suspension of action.



## **Contested Decision and Relief Sought**

49. The Appellants contest the Secretary-General's decision to withdraw their letters of appointment. Specifically, they request the following relief: (a) a stay of any steps to withdraw their appointments; (b) continuation of their onboarding process; (c) restoration of Inspira profiles and email access of two former ISA staff members; (d) a halt to recruitment for the positions to which they were appointed; (e) a prohibition on the reclassification or restructuring of these posts.

## **Request for Suspension of Action on the Withdrawal of Appointments**

50. ISA Staff Rule 11.2(c)(ii) requires that a request for suspension of action must meet two conditions: (a) the contested decision has not been implemented; (b) its implementation would result in irreparable injury to the Appellants. The Panel must first determine whether the contested decision has already been implemented. The Appellants have stated that the withdrawal of their appointments was to be fully executed within 10 days of the notification received on 2 January 2025. As of the date of this decision, it is clear that the withdrawal process has been completed, which led to the discontinuation of their onboarding process and the blocking of the Inspira profiles and email access.

51. In the Mason case<sup>2</sup>, the JAB determined that suspending an action was necessary to prevent mootness of an appeal. Here, however, the remedy sought by the Appellants is no longer viable as the withdrawal of their appointments has already been executed. Given that the first condition under Rule 11.2(c)(ii), that the decision must not yet have been implemented, is not met, there is no legal basis to suspend an action that has already taken effect.

52. The Panel acknowledges the Appellants' concerns regarding harm, particularly the career and financial consequences they may face due to the withdrawal of their letters of appointment. In this regard, the Appellants assert that they resigned from prior employment, made relocation arrangements, and relied on their ISA appointments for financial stability. They

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<sup>2</sup> ISBA/JAB/MASON/2024.



argue that their sudden separation would cause career uncertainty, reputational damage, and financial hardship. However, since the primary contested decision has already been executed, the remedy of suspension of action is no longer applicable. In situations like the present case, where suspension of action is no longer an available option, another alternative remedy might be pursued, should the Appellants choose to do so.

### **Request for a Halt to Recruitment and Prohibition on Restructuring**

53. The Appellants have also requested that the JAB order a halt to recruitment for their former positions and a prohibition on any reclassification or restructuring of these posts. The Panel notes that in the Mason case, a halt to recruitment and restructuring was necessary to preserve the substance of the appeal because the appellant's position was still in dispute. However, in this case, the Appellants' appointments have already been withdrawn and, as of the date of this decision, the prima facie information available to the JAB indicates that the positions they were appointed to do not still exist in the same form. According to the Secretary-General's reply and her additional documentation, several positions have already been restructured and reclassified, including those to which the Appellants were previously appointed, which leads to the request for suspension in this regard being moot.

### **Conclusion**

54. The Panel determines that the request for suspension of action must be **DISMISSED** because: (a) the contested decisions, namely the withdrawal of the Appellants' letters of appointment and the restructuring/reclassification exercise, have already been implemented; (b) there is no action left to suspend under ISA Staff Rule 11.2(c)(ii).

55. This determination on the application for suspension of action does not preclude the Appellants from pursuing a future appeal of their claims separately, should they choose to do so.



**Dated 24 February 2025**

**Judge Martha Halfeld Furtado de Mendonça Schmidt**

Panel Chair

**Abena Kwakye-Berko**

Panel Member

**Judge Helmut Tuerk**

Panel Member