



Council

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English only

Thirty-first session

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Kingston, 13-24 July 2026

Agenda item 21

Other matters

Status of the proceedings pending before the International Tribunal for the Law of the Sea

Note by the secretariat

I. Introduction

1. By notes verbales dated 5 June 2026, the Secretary-General of the International Seabed Authority notified members of the Authority of the institution of proceedings by Nauru Ocean Resources Inc. (NORI) and by Tonga Offshore Mining Limited (TOML) against the International Seabed Authority before the Seabed Disputes Chamber (the Chamber) of the International Tribunal for the Law of the Sea (the Tribunal).

2. The present report is prepared to provide the Council with an update on the status of the ongoing proceedings.

3. The present report is submitted bearing in mind the direction of the President of the Chamber – issued on 29 June 2026 – pursuant article 90, paragraph (4), of the Rules of the Tribunal.¹ Mindful of this direction,² the present report refers solely to publicly available information – duly linked in the footnotes – and is presented exclusively to provide factual information about the ongoing proceedings to the Council, without taking any position nor expressing any opinion.

II. Background to the proceedings

4. In paragraph 10 of its decision ISBA/30/C/19, the Council urged 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

¹ Article 90, paragraph (4) of the Rules of the Tribunal: *Pending the meeting of the Tribunal, the President of the Tribunal may call upon the parties to act in such a way as will enable any order the Tribunal may make on the request for provisional measures to have its appropriate effects.*

² https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/C34_C35_Final_Sub-missions_ISA.pdf.

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.

5. The Commission took note of the Council's decision. During the first part of its thirty-first session, the Commission took into account the elements included in paragraph 10 of the decision in order to request additional information from two contractors (ISBA/31/C/4/Add.1).

6. By letter dated 16 March 2026 addressed to NORI and TOML (hereinafter also collectively referred to as the "Applicants"), the Secretary-General confirmed that the Applicants had been identified as requiring specific attention and requested further information by 31 May 2026 regarding whether its activities might be inconsistent with UNCLOS or its contractual rights.³

7. By letters dated 21 and 22 April 2026, the Applicants wrote to the Chair of the Commission requesting, *inter alia*, "confirmation of the procedure that the Commission intends to follow" and "further clarification and particulars in respect of the questions raised and their legal bases".⁴ The Applicants requested a response by 8 May 2026.⁵

8. By letters dated 13 May 2026, the Chair of the Commission, replied to the Applicants, stating *inter alia* that "[...] bearing in mind that the work of the Commission is conducted on a collective and consensus-based basis, it would neither be procedurally appropriate nor feasible for me, in my capacity as Chair, to express any position on the matters raised in your correspondence prior to the Commission having had a full and proper opportunity to consider, deliberate upon, and determine its position collectively".⁶

9. On 18 May 2026, the Secretariat of the Authority received a Notice of Dispute from 10ach Applicant, requesting consultations within 10 days (*i.e.* by 29 May 2026).

10. On 26 May 2026, the Secretary-General wrote to the Applicants, in response to their Notices of Dispute, reiterating the commitment of the Authority to "[...] fostering a collaborative and amicable resolution that serves the best interests of all parties involved" and "[...] to the peaceful resolution of this matter and to fulfilling [its] responsibilities in good faith, with full respect for the rights and obligations of all parties under the Convention". Notwithstanding the above, the Secretary-General clarified that the need "to conduct a thorough legal assessment of the issues presented to facilitate a more meaningful and constructive engagement during our discussions", therefore proposing "that consultations be initiated at an appropriate time, following further discussions with the senior leadership of the Legal and Technical Commission".⁷

11. On 30 May 2026, the Applicants instituted the proceedings under article 187(c)(i) and (ii) of the Convention.⁸ Each application was accompanied by a request

³ https://www.itlos.org/fileadmin/itlos/documents/cases/34/2026.05.30_Nauru_Ocean_Resources_Inc._Provisional_Measures_Application_92502114.1_.pdf, at paragraph 20.

⁴ https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/ISA_Response_25.-06.2026.pdf, at paragraph 43(b).

⁵ https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/verbatim_records_34_and_35/ITLOS_PV26_C34-35_3_E.pdf.

⁶ *Ibidem*, at paragraph 43(c).

⁷ *Ibidem*, at paragraph 43(f).

⁸ https://www.itlos.org/fileadmin/itlos/documents/cases/34/2026.05.30_Nauru_Ocean_Resources_Inc._Application_92502112.1_.pdf; and

for provisional measures under article 290, paragraph 1 of the Convention.⁹ The two cases were then entered in the List of cases of the Tribunal as – respectively – case 34 concerning an inquiry by the International Seabed Authority (Nauru Ocean Resources Inc. v. International Seabed Authority) and case 35 concerning an inquiry by the International Seabed Authority (Tonga Offshore Mining Ltd. v. International Seabed Authority). The Authority was officially served with the applications on 5 June 2026.

12. In the application for provisional measures, the Applicants requested the Tribunal the following provisional measures:

- a) order the Authority to immediately suspend the inquiry regarding the alleged “possible non-compliance” of the Applicants with its contractual obligations, pending the final decision of the Chamber;
- b) order the Authority to refrain from taking, authorizing, or permitting any further steps or measures in connection with that inquiry pending the final decision of the Chamber;
- c) order the Authority to ensure that no recommendations, findings, reports, or other outputs arising from the Commission’s inquiry are adopted, issued, published, communicated, or otherwise relied upon pending the final decision of the Chamber;
- d) prohibit the Authority from taking any action that might aggravate or extend the dispute, or prejudice the execution of any decision the Chamber may render; and
- e) order such other provisional measures as the Chamber considers necessary to preserve the Applicants’ rights and to ensure the effectiveness of its eventual decision.

13. NORI additionally requested, pending the final decision of the Chamber, to prohibit the Authority from taking any step or adopting any position, including through the Commission, that would have the effect of prejudging, refusing, or otherwise adversely affecting NORI’s application dated 19 January 2026 for an extension of the Exploration Contract, insofar as such action is based on or influenced by the ongoing inquiry.¹⁰

14. On 25 June 2026, the Authority filed its written statement in response to the requests for provisional measures submitted by the Applicants¹¹.

15. Upon request of the Applicants, on 29 June 2026 the President of the Chamber called upon the Parties – pursuant to Article 90, paragraph (4) of the Rules of the Tribunal – not to act in any way that could hinder any order that the Chamber may

https://www.itlos.org/fileadmin/itlos/documents/cases/35/2026.05.30_-_Tonga_Offshore_Mining_Ltd._-_Application_92502116.1_.pdf.

⁹https://www.itlos.org/fileadmin/itlos/documents/cases/34/2026.05.30_Nauru_Ocean_Resources_Inc._-_Provisional_Measures_Application_92502114.1_.pdf; and https://www.itlos.org/fileadmin/itlos/documents/cases/35/2026.05.30_Tonga_Offshore_Mining_Ltd._-_Provisional_Measures_Application_9250211-7.1_.pdf.

¹⁰https://www.itlos.org/fileadmin/itlos/documents/cases/34/2026.05.30_Nauru_Ocean_Resources_Inc._-_Provisional_Measures_Application_92502114.1_.pdf.

¹¹https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/ISA_Response_25.-06.2026.pdf; and https://www.itlos.org/fileadmin/itlos/documents/cases/35/Provisional_Measures-/ISA_Response_25.06.2026.pdf.

make on the request for provisional measures.¹² The Chamber has elected to maintain this direction pending its determination of the requests. This direction should be respected by all organs of the Authority. As a result, all members of the Authority should refrain *inter alia* from commenting on the ongoing litigation.

16. Hearings were subsequently held on 2 and 3 July 2026. The Republic of Naoero (Nauru) as a sponsoring State participated in the hearings and delivered a statement on 2 July 2026¹³. By order dated 24 June 2026,¹⁴ Nauru was allowed to present a written statement on the merits of the case.

17. At the closing of the hearings, the President of the Chamber indicated that the Chamber would deliver its order on the request for provisional measures on 18 July 2026.

III. Recommendation

18. In light of the above, and mindful of the obligation on the Authority, pursuant to Article 90, paragraph (4) of the Rules of the Tribunal, not to hinder any order that the Chamber may make on the requests for provisional measures, the Council is invited to take note of the present status report on ongoing proceedings.

¹²https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/verbatim_records_34_-and_35-/ITLOS_PV26_C34-35_4_E.pdf.

¹³https://www.itlos.org/fileadmin/itlos/documents/cases/34/Provisional_Measures/verbatim_records_34_-and_35-/ITLOS_PV26_C34-35_2_E.pdf.

¹⁴https://www.itlos.org/fileadmin/itlos/documents/cases/34/C34_Order_24.06.2026-6.pdf.