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International Seabed Authority  
Mr Michael Lodge  
Secretary General  
14-20 Port Royal Street  
Kingston, Jamaica

Amsterdam, 21 February 2024

**Subject: Information document on Agenda Item 20 of the 29th Session of the Council,  
Part I, 18 to 29 March 2024**

Dear Mr. Lodge,

In relation to agenda item 20 of the provisional agenda for the upcoming 29th Session of the ISA Council, Part I, "*Report of the Secretary-General on incidents in the NORI-D contract area in the Clarion-Clipperton Zone*", we are submitting an information document to contribute to the discussions held by members of the Council.

As per UNCLOS Article 169(3), **we kindly ask that this document be uploaded to the ISA website as part of the documents available to ISA Council members in preparation for this Session.**

Yours sincerely,

Louisa Casson  
Global Project Leader

## Agenda item 20. Report of the Secretary-General on incidents in the NORI-D contract area - Greenpeace response.

### Summary

The following document discusses the issues raised by the recent communications of the ISA Secretary-General about the peaceful protest held by Greenpeace International in the NORI-D contract area and provides information relevant to Item 20 in the provisional agenda of the upcoming ISA Council Session, Part I, "*Report of the Secretary-General on incidents in the NORI-D contract area in the Clarion-Clipperton Zone.*"<sup>1</sup>

Greenpeace International is deeply concerned by the omission in communications by the ISA Secretary-General of fundamental rights and freedoms such as the right to protest, including against the threat of serious harm that deep sea mining activities pose to the marine environment. Greenpeace International includes information below for ISA Council Members to consider, regarding the lack of legal basis and relevance for measures contained in the notification by the Secretary-General of 27 November.<sup>2</sup> Greenpeace International is highly concerned that these measures go beyond the competence of the ISA Secretary-General, in seeking to control the actions of a third party which is neither a contractor nor a member State, and limit the freedom of navigation and right to protest on the high seas, based on an unsubstantiated assertion that a peaceful protest using kayaks and climbers posed a threat of serious harm to the marine environment.

Greenpeace International calls on ISA Council Members to take into account this information in their deliberations and will continue to stress that the best way to prevent the threat of serious harm to marine environment from deep sea mining is for members of the ISA to agree on a moratorium or precautionary pause on deep sea mining.

### Background

From 22 November to 4 December 2023, Greenpeace International peacefully protested at sea against the activities of the vessel M/V *Coco*, chartered by NORI/The Metals Company to operate in the NORI-D contract area.<sup>3</sup> The M/V *Coco* was collecting data to allow NORI/The Metals Company to finalise and submit an application for a plan of work under the 2-year rule after July 2024.<sup>4</sup> Greenpeace International activists kayaked around the M/V *Coco* from 22

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<sup>1</sup> ISBA /29/C/L.1 (26 January 2024). Provisional agenda of the Council.

<sup>2</sup> Issued on 27 November as Note No. ISA/EOSG/2023/312, made available online on 28 November: <https://www.isa.org.jm/news/the-secretary-general-of-the-isa-takes-immediate-measures-in-response-to-nori-d-area-incident/>

<sup>3</sup> Greenpeace International (23 November 2023). Greenpeace confronts deep sea mining ship in at-risk Pacific region. Available at <https://www.greenpeace.org/international/press-release/63803/greenpeace-confronts-deep-sea-mining-ship-in-at-risk-pacific-region/>

<sup>4</sup> See for instance The Metals Company (1 August 2023). Update on Expected Timeline, Application Costs and Production Capacity Following Part II of the 28th Session of the International Seabed Authority. Available at

November and the vessel's stern A-frame was safely climbed by five Greenpeace International activists between 25 and 30 November to peacefully draw attention to the demand that TMC stop its deep sea mining activities in one of the world's last untouched ecosystems.<sup>5</sup>

In response to the Greenpeace International protest from the vessel M/Y *Arctic Sunrise*, on 27 November ISA Secretary-General Michael Lodge transmitted to the Members of the Authority a *Notification of immediate measures of a temporary nature* on the basis of a "threat of serious harm to the marine environment" caused by the Greenpeace International protest.<sup>6</sup> On 15 December 2023 the ISA President and Vice-Presidents of the Council issued a communication on recent incidents in the NORI-D Contract Area.<sup>7</sup>

On 27 November 2024, NORI filed an injunction against Greenpeace International in a Dutch Court. On 30 November the Court presented its ruling, ordering Greenpeace International activists to come down from the crane of the M/V *Coco* A-frame, but also **recognising Greenpeace's lawful right to protest in the vicinity of the M/V Coco**. Greenpeace International immediately complied with the ruling, and continued with peaceful protest activities until 4 December. **The ruling questioned the authority of the ISA Secretary-General's immediate measures and found that the activities carried out by NORI/The Metals Company in the NORI-D area could not be considered independent scientific research, due to the contractor's commercial interest.**<sup>8</sup>

Greenpeace International wrote to the ISA Secretary-General on 27 and 28 November 2023 in response to his communications and asked the Secretary-General to kindly distribute its second reply to Members of the Authority.<sup>9</sup> On 12 January 2024, the ISA Secretary-General issued a second report on the immediate measures transmitted in November.<sup>10</sup> The report appends submissions made by the Government of The Netherlands, and by NORI, as well as another contractor, Tonga Offshore Mining Limited, but did not include Greenpeace's correspondence on the situation.

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<https://investors.metals.co/news-releases/news-release-details/tmc-announces-corporate-update-expected-timeline-application/>

<sup>5</sup> Greenpeace International (30 November 2023). Court confirms Greenpeace right to peaceful protest as activists' 200 hour long protest against deep sea mining in the Pacific continues. Available at <https://www.greenpeace.org/international/press-release/64037/court-confirms-greenpeace-protest-right-to-peaceful-protest-as-activists-200-hour-long-protest-against-deep-sea-mining-in-the-pacific-continues/>

<sup>6</sup> Note No. ISA/EOSG/2023/312 (27 November 2023). Notification of immediate measures of a temporary nature taken in respect of the Contract for Exploration for Polymetallic Nodules between the International Seabed Authority and Nauru Ocean Resources Inc dated 22 July 2011 pursuant to Regulation 33 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

<sup>7</sup> ISA press release (15 December 2023). President and Vice-Presidents of the Council issue statement on recent incidents in NORI-D Contract Area.

<sup>8</sup> Amsterdam Court. Case number C/13/742765 / KG ZA 23-1028 IHJK/MV. Summary judgement of November 30, 2023. The original ruling (in Dutch) is available at <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2023:7600>. An informal translation of the ruling is available at <https://docs.google.com/document/d/1aZ3wy4ocHrNdQsrFdL5FbQ8l0mZDDB-BUd7ONJ2q0DE/edit>.

<sup>9</sup> Greenpeace International letter to the ISA Secretary-General dated 28 November 2023.

<sup>10</sup> ISA. Second Report on the Immediate Measures of the Secretary-General of the Authority dated 27 November 2023.

The immediate measures transmitted by the ISA Secretary-General lack legal basis and relevance to the situation

- 1) The immediate measures transmitted by the ISA Secretary-General were predicated on the “*threat of serious harm to the marine environment*”, for which delegations should note:
  - There was no evidence or even slight indication of a threat of serious harm to the environment. There is a clear irony in invoking a serious threat to the environment as a means to shield an industry from protest against its plans that would cause exactly such a threat, a threat which is well-documented.
  - The *prima facie* threat of such harm was not substantiated in any way by the Secretary General. The statement that there is an “intrinsic” link between the safety of navigation and the prevention of threats of serious harm to the marine environment cannot serve to prove any risk to the marine environment in this particular case.
  - No credible allegation of risk to the safety of navigation is raised in the report of the Secretary-General. The lack of evidence of such risk further undermines the legal basis for the immediate measures.
- 2) Regulation 33 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area is not a legal basis for the issuance of the purported measures **as Greenpeace is not a contractor and is not undertaking exploration or exploitation activities**.
  - Regulation 33 of the nodules exploration regulations was designed to apply where a **contractor** becomes aware of a risk of serious harm to the environment **arising from their activities**. Greenpeace’s activities on the high seas are therefore outside the scope of Regulation 33.
  - Greenpeace is not a State Party to UNCLOS, nor an ISA contractor, and therefore is not directly bound by the ISA Exploration Regulations. The Secretary-General’s attempt to instruct and exercise legal authority over a private third party actor is a concerning overreach.
  - The Netherlands concurs in their response to the Secretary-General that the events do not qualify as a situation envisaged under Regulation 33 of the nodules exploration regulations and “*expressed its concern to the approach of the Secretary-General that is not in conformity with Regulation 33.*”<sup>11</sup>
  - The Amsterdam Court ruling did not consider the measures binding on Greenpeace international, referring to NORI invoking ISA Secretary-General Immediate Measures in the following terms: “*This appears to be a call, not an enforceable measure. It is unclear to what extent this authority is authorised to actually impose the measures mentioned on (in this case) Greenpeace.*”
  - The investigation of protest actions at sea and the issuance of measures in this regard is not within the competence of the ISA Secretary-General. Article 92 of UNCLOS allocates exclusive jurisdiction to the flag State. Parties concerned about the actions of *Arctic Sunrise* should follow due procedure in raising their concerns with the flag State (the

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<sup>11</sup> Note No. ISA/EOSG/2023/312 (12 January 2024).

Netherlands). Accordingly, proceedings were taken by the contractor before the competent court in Amsterdam. This procedure offers the safeguards required under international law when a restriction on the exercise of the rights to freedom of expression and peaceful assembly is proposed, including the right to appeal. NORI/The Metals Company publicly welcomed the Dutch judge's ruling<sup>12</sup> but subsequently decided to pursue an appeal, which is ongoing.

- 3) Under UNCLOS Article 147(2)(c) safety zones shall be created around installations, not ships. No minimum distance is specified. Under UNCLOS Article 260, "*Safety zones of a reasonable breadth not exceeding a distance of 500 metres may be created around scientific research installations*". M/V *Coco* is not a 'scientific research installation', it is a ship being used for deep sea mining exploration activities. We are unaware of any legal basis in UNCLOS for a ship to set a 500 metre zone around them, and the practical implications of such a proposal in relation to ISA contractors also bears further consideration, given that an exploration ship is likely to be moving, and may require secondary vessels in its vicinity for monitoring or other purposes.

## The importance of protest

The matter at stake arises from the exercise by Greenpeace International of the fundamental right to safe and peaceful protest at sea. This aspect is almost entirely lacking from the communications of the ISA Secretary-General, who fails to acknowledge the importance of the right to peaceful protest, or the evolving area of international law recognized by the United Nations and in regional conventions that seeks to hear and protect those who defend environmental rights.<sup>13</sup> The right to protest derives from the freedom of expression and the freedom of assembly, both of which are recognized in several international human rights instruments.<sup>14</sup> Greenpeace places very strong importance on this fundamental right.

As stated by the Netherlands in its written response to the ISA Secretary-General, the Arctic Sunrise Award<sup>15</sup> confirmed that "*the right to protest at sea is a lawful use of the sea related to the freedom of navigation.*"<sup>16</sup> The Award also notes that "*the right to protest at sea has been recognised by resolutions of international organisations*".

The International Maritime Organization Resolution MSC303(87), for example, affirms "*the rights and obligations relating to legitimate and peaceful forms of demonstration, protest, or confrontation.*" The International Whaling Commission Resolution 2011-2 on Safety at Sea states that "*the Commission and Contracting Governments support the right to legitimate and peaceful forms of protest and demonstration.*" This is relevant as Greenpeace organisations extensively interfered with whaling activities on the high seas.

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<sup>12</sup> See post on X from TMC and NORI CEO <https://x.com/gtbgbt/status/1730281976865677587?s=20>

<sup>13</sup> See for instance UNEP (2019). Environmental Rule of Law. First Global Report.

<sup>14</sup> Permanent Court of Arbitration. The Arctic Sunrise Arbitration (Netherlands v. Russia). See <https://pca-cpa.org/en/cases/21/>.

<sup>15</sup> See Permanent Court of Arbitration. The Arctic Sunrise Arbitration (Netherlands v. Russia) (2014), documents available at <https://pca-cpa.org/en/cases/21/>.

<sup>16</sup> Note No. ISA/EOSG/2023/312 (27 November 2023).

The Amsterdam Court ruling agreed with Greenpeace International that it has the right to engage in peaceful protest upheld in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The judge also found that Greenpeace's protest:

*“is directed against an **issue of great social importance**. Greenpeace [...] has **long been pointing out** the catastrophic environmental consequences that it and also a large group of scientists believe deep sea mining will have: the seabed and marine environment will be severely and/or irreversibly damaged, which will have a lasting impact on life on Earth. For now, Greenpeace has sufficiently demonstrated that **there is no communis opinio in science that deep sea mining can take place without environmental damage** and that manganese **nodule mining is highly controversial**. It is therefore **understandable** that Greenpeace, in its **role of public watchdog**, calls attention to the potentially very serious consequences through its actions.”* [emphasis added]<sup>17</sup>

## Greenpeace's history of peaceful and safe protest at sea

Greenpeace's protests have historically targeted activities which were unsustainable but legal from the point of view of existing regulations at the time. International law has evolved and harm to the marine environment has been prevented thanks to the actions of protesters who exerted their rights. Examples of this are protests against the use of large-scale driftnets on the high seas, the dumping of radioactive waste at sea or whaling, just to name a few. All of them were legal when Greenpeace was peacefully protesting against them, but governments have since taken action to restrict them.

Greenpeace International wants to call to the attention of the Members of the Authority that:

- Greenpeace has a proven track record of safety and professionalism of over 50 years of protests at sea. Greenpeace's activists are properly trained to conduct demonstrations in a safe manner. The safety of people and vessels at sea is a high priority for Greenpeace International and the protest in the NORI-D area was carried out over 14 days, with no harm to people, vessels nor the marine environment.
- For Non-Violent Direct Actions that Greenpeace International does choose to undertake at sea, Greenpeace staff are in contact via ships' radios to coordinate on safety. The protest against the activities of the *M/V Coco* was no exception.
- The Amsterdam Court ruling supports this: *“Greenpeace further argued at length that it has done and will continue to do everything possible to avoid dangerous situations on the water. There are always rubber boats in the vicinity of the kayaks and there is constant contact with the activists in the kayaks and - if necessary - with the captain of the Coco.”*
- Greenpeace International complied with IMO Res MSC.303(87).

Greenpeace's valuable contribution to multilateral organisations and negotiations focused on global environmental issues has very recently been acknowledged by the Secretary-General of

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<sup>17</sup> Amsterdam Court. Case number C/13/742765 / KG ZA 23-1028 IHJK/MV.

the International Maritime Organisation. In a letter sent by departing Secretary-General, Kitack Lim, dated 8 December 2023, he writes “**Your unwavering commitment to the principles of maritime safety and environmental protection, in particular to the decarbonization of international shipping, has been a source of inspiration for our Organisation.**”<sup>18</sup>

## Preventing harm to the marine environment from deep sea mining is the real priority

According to public statements by the company, The Metals Company’s expedition to the NORI-D area in November-December 2023 was designed to enable them to finalise a plan of work for exploitation in 2024. The company has repeatedly said they will file an application for a plan of work in 2024 irrespective of the science and the negotiation process taking place at the ISA.<sup>19</sup> This is despite the ISA Council opposition to mining in the absence of Rules, Regulations and Procedures, confirmed by two consensus decisions in March 2023 and July 2023.<sup>20</sup>

**Greenpeace’s protest in the NORI-D area was not against science, as was mischaracterised by The Metals Company.**<sup>21</sup> Scientists have warned that mining the deep sea without irreversible biodiversity loss will not be possible, and twenty four States to date are calling for a moratorium, precautionary pause or outright ban; a number that has tripled since November 2022. The intention of The Metals Company to apply to mine the seabed in 2024, regardless of increasingly vocal concerns and no regulations in place, is the real controversy.

The nature of the research carried out by NORI/The Metals Company was questioned by the ruling of the Amsterdam Court, noting that NORI is “*a party with a commercial interest in an outcome favourable to it or its shareholder. After all, NORI wants to be able to conduct deep sea mining at a later stage. **Independent scientific research into the effects of deep sea mines on the ground is therefore out of the question for the time being.***” [emphasis added]

Numerous governments and scientists have been clear that it is not possible to agree robust regulations that can uphold governments’ obligations on marine protection, equity/common heritage of humankind, and halting and reversing biodiversity loss in this commercially-driven timeline. A recent exhaustive review of the progress made so far in the negotiations of the

<sup>18</sup> IMO Secretary-General letter to Greenpeace International dated 8 December 2023.

<sup>19</sup> The Northern Miner (September 2023). Navigating the deep: The Metals Company eyes late 2025 ocean mining start. The Metals Company’s chief financial officer Craig Shesky told media in September that TMC would not wait for governments at the International Seabed Authority to finalise a Mining Code, saying: “Whether they’ve finalised what the legal framework for deep sea mining will look like or not, we’ll file our permit application and force them to process it.”

<sup>20</sup> ISA, Decision of the Council of the International Seabed Authority relating to the understanding and application of Section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, ISBA/28/C/9 (March 2023) and ISBA, Decision of the Council of the International Seabed Authority on a timeline following the expiration of the two-year period pursuant to Section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, ISBA/28/C/24 (July 2023).

<sup>21</sup> The Metals Company (November 2023). Greenpeace’s Illegal Attempt to Stop a Legally-Mandated Scientific Research Expedition.

Mining Code found that “over 30 major regulatory issues remain outstanding because of not receiving sufficient time for discussion, divergent views amongst member States, and due to a lack of information and inputs to progress negotiations” suggesting that negotiations should be expected to “continue long into the foreseeable future.”<sup>22</sup>

**Preventing harm to the marine environment must be the priority for the ISA, rather than taking any action to limit or criticise peaceful environmental protest.**

For further information or to discuss in more detail, please contact:

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<sup>22</sup> Chris Pickens, Hannah Lily, Ellycia Harrould-Kolieb, Catherine Blanchard, Anindita Chakraborty. From what-if to what-now: Status of the deep-sea mining regulations and underlying drivers for outstanding issues. Marine Policy, 2024. <https://doi.org/10.1016/j.marpol.2023.105967>.