



# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Case No. 2025-1992

**Marie Bourrel-McKinnon**

**(Applicant)**

**v.**

**Secretary-General of the International Seabed Authority**

**(Respondent)**

**Order No. 592 (2025)**

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) is seized of a pleading presented as an “appeal” filed on 27 January 2025 by Ms. Marie Bourrel-McKinnon in relation to the termination of her appointment by the International Seabed Authority (ISA) (Case No. 2025-1992).
2. The Appeals Tribunal is also seized of a Motion for Additional Pleadings filed on 6 February 2025 by Ms. Bourrel-McKinnon in this case.

## **Facts and Procedure**

3. Ms. Marie Bourrel-McKinnon has been a staff member with ISA since 2017. At the relevant time of events, she held the position of Chief of Staff and Head of the Strategic Planning Unit, serving at the D-1 level on a fixed-term appointment (FTA) set to expire in December 2028.
4. On 1 January 2025, the new Secretary-General of ISA officially commenced her appointment.
5. On 7 January 2025, Ms. Bourrel-McKinnon was informed by letter from the Officer-in-Charge of the Office of the Administrative Services that her appointment was terminated by the newly appointed ISA Secretary-General. The letter further stated that her position had been “reclassified and restructured” by the new Secretary-General into a different role within the Secretariat, effective 6 January 2025.

6. Between 6 and 16 January 2025, Ms. Bourrel-McKinnon filed six requests for administrative review with the ISA Joint Appeals Board (JAB) pursuant to the relevant ISA Staff Rules, regarding, *inter alia*, her termination of appointment. Immediately after filing each of her six grievances, Ms. Bourrel-McKinnon also requested a suspension of action in relation to each grievance pursuant to ISA Staff Rule 11.2(c)(i).
7. At the time of her submission, Ms. Bourrel-McKinnon submits that the JAB had failed to acknowledge her requests for administrative review and for suspension of action.
8. On 15 January 2025, the Chair of the JAB informed Ms. Bourrel-McKinnon by e-mail that he was no longer the Chair of the JAB.
9. On 23 January 2025, the ISA Secretary-General issued Information Circular ISBA/ST/IC/2025/3 in which it named a new Chair of the JAB.
10. On 27 January 2025, Ms. Bourrel-McKinnon filed an “appeal” with the Appeals Tribunal, requesting that it issue an Order for specific performance under Articles 2(1), 2(10), 9(1) and/or 9(4) of the Appeals Tribunal Statute (Statute). Specifically, she requested that the UNAT order the suspension of the six administrative decisions made by the ISA Administration, pending a decision on the merits of the case by a neutral first-instance body of administrative justice within ISA. She clarified that her appeal “relates to interim measures in form, but not in the sense envisaged by Article 9(4) because there is no issue of ‘consistency with the judgment of the UNDT’”.
11. On 31 January 2025, Ms. Bourrel-McKinnon was informed that the JAB had constituted a panel to consider her six requests for administrative review.
12. On 5 February 2025, the new Chair of the JAB constituted a panel to consider Ms. Bourrel-McKinnon’s requests for suspension of action.
13. On 6 February 2025, Ms. Bourrel-McKinnon filed a Motion for Additional Pleadings.
14. On 10 February 2025, the UNAT Registry requested ISA to respond to both the initial pleading and the Motion for Additional Pleadings by 13 February 2025.

15. On 13 February 2025, the Secretary-General filed her “Response to Motion for Interim Measures and Motion for Additional Pleadings”.<sup>1</sup>

### **Parties’ Submissions**

#### ***Ms. Bourrel-McKinnon’s “appeal”***

16. Ms. Bourrel-McKinnon submits that the JAB failed to exercise jurisdiction vested in it by neglecting to address her requests for suspension of action. She argues that the JAB was effectively rendered inoperative by the newly appointed Secretary-General. She contends that, as a result, the JAB lost its ability to decide on her requests for suspension of action, thereby allowing the Appeals Tribunal to assume competence to hear and rule on the present case.

17. Ms. Bourrel-McKinnon emphasizes that she does not seek to challenge the administrative decisions under review themselves or address the merits of their lawfulness. Rather, she solely requests the intervention of the Appeals Tribunal to address the failure of the JAB to issue any recommendation regarding her requests for suspension of action in relation to these administrative decisions.

#### ***Ms. Bourrel-McKinnon’s Motion for Additional Pleadings***

18. Ms. Bourrel-McKinnon submits that since she filed her “appeal” with the Appeals Tribunal, the ISA Administration has continued its “campaign” against her including putting her at risk of physical harm by unilaterally and without notice terminating her home security system before she left Jamaica with her daughter. She further submits that while ISA’s actions are designed purely to harm and cause distress to her and amount to blatant retaliation, they more importantly also amount to an assault on an international civil servant’s duty of care.

19. Ms. Bourrel-McKinnon sets out in an affidavit annexed to her Motion how she discovered that ISA had ordered the security company to visit her home and disconnect her security system. She contends that these are exceptional circumstances that warrant the filing of short additional pleadings and evidence. ISA still has time in which to respond to the original appeal and these short additional pleadings will not prejudice ISA in

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<sup>1</sup> The Secretary-General refers to Ms. Bourrel-McKinnon’s “appeal” as “Motion”.

anyway. Moreover, given that ISA blocked her access to her e-mail account the day after she was terminated and has since prevented her from going to the office, she has been prevented from building her case against the ISA. She has only just received an affidavit from the former Secretary-General which is crucial to her case and which she seeks to tender into evidence.

### ***Secretary-General's Response***

20. The Secretary-General requests that the Appeals Tribunal dismiss the “appeal” and the Motion for Additional Pleadings as manifestly not receivable and remand the matter to the JAB for its consideration.

21. The Secretary-General contends that the lack of a first-instance decision by the JAB renders the “appeal” premature. She notes that, pursuant to Article 2(5) of the Special Agreement concluded between ISA and the United Nations (Special Agreement), UNAT’s jurisdiction is contingent upon a prior ruling at the first instance by the JAB. In support of her contention, the Secretary-General cites the Appeals Tribunal Judgment in *Webster*, where the Appeals Tribunal held that as a second-level tribunal, the Appeals Tribunal cannot conduct its review without a decision from a neutral first-instance process and body.<sup>2</sup> She also highlights that the amended ISA Staff Rules grant the JAB explicit authority to issue decisions on requests under ISA Staff Rule 11.2(c), which are subject to appeal.

22. The Secretary-General observes that although Ms. Bourrel-McKinnon presents her submissions as an appeal, she is seeking judicial intervention to rescind administrative decisions that have already been implemented, a form of relief not envisaged by the applicable legal framework.

23. The Secretary-General argues that Ms. Bourrel-McKinnon’s Motion for Additional Pleadings attempts to subvert the requirements applicable to motions for interim relief (e.g., page and word limits). She contends that her Motion for Additional Pleadings is not receivable because she failed to request permission and is improperly introducing new

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<sup>2</sup> *Webster v. Secretary-General of the International Seabed Authority* Judgment No. 2020-UNAT-983.

arguments for the first time. Furthermore, she highlights that additional pleadings are only allowed after the answer to the appeal has been filed.

24. The Secretary-General asserts that Ms. Bourrel-McKinnon’s assertion that the JAB has failed to exercise its jurisdiction is misplaced. She argues that the “appeal” and the Motion for Additional Pleadings are based on incorrect arguments – some of which were known but not disclosed by Ms. Bourrel-McKinnon – rendering them Moot. Specifically, the Secretary-General asserts that the JAB was duly appointed on 23 January 2025 and Ms. Bourrel-McKinnon was subsequently informed of its creation. Although there was a delay in constituting the panel to adjudicate Ms. Bourrel-McKinnon’s case, the Secretary-General contends that this delay does not amount to a failure to exercise jurisdiction and does not entitle Ms. Bourrel-McKinnon to “bypass” the first-instance tribunal. In this regard, the Secretary-General observes that the applicable legal framework does not impose a deadline on the JAB to dispose of applications for suspension of action.

25. The Secretary-General contends that Ms. Bourrel-McKinnon has not demonstrated any entitlement to interim relief. Although Ms. Bourrel-McKinnon’s termination may have been “abrupt”, it has been done in accordance with the terms of her appointment.

26. The Secretary-General further observes that the remaining administrative actions that Ms. Bourrel-McKinnon challenges do not constitute administrative decisions, which undermines the receivability of her requests for suspension of action.

27. Last, the Secretary-General requests the Appeals Tribunal to advise Ms. Bourrel-McKinnon that she may be subject to an award of costs if she continues to pursue a “meritless litigation”.

### **Considerations**

28. In the present case, Ms. Bourrel-McKinnon qualified her pleading as an “appeal”. However, as she herself acknowledges, there is no underlying Judgment. A party cannot unilaterally designate any pleading as an “appeal”. The substance of the pleading, including the reliefs sought, must align with its designation. In the present case, given the relief sought – specifically, that the UNAT order the suspension of the six administrative

decisions made by the ISA Administration, pending a decision on the merits of the case by a neutral first-instance body of administrative justice within ISA – we find that it is clear that Ms. Bourrel-McKinnon’s pleading, although labeled as an “appeal”, in fact constitutes a motion for interim measures.

29. The Appeals Tribunal recently disposed of three similar motions with comparable facts and chronology of events in Order No. 591 (2025).<sup>3</sup> Upon review, we find that the reasoning set forth in that Order is fully applicable to the present case.

30. The Appeals Tribunal’s jurisdiction is clearly circumscribed by Article 2 of the Appeals Tribunal Statute read together with Article 2 of the Special Agreement between the United Nations and ISA. The Appeals Tribunal has jurisdiction and competence to determine whether the decision of the neutral first instance body, the JAB, exceeded its jurisdiction or competence; failed to exercise jurisdiction vested in it; erred on a question of law; committed an error in procedure, such as to affect the decision of the case; or erred on a question of fact, resulting in a manifestly unreasonable decision.

31. The Appeals Tribunal has further competence and jurisdiction, pursuant to Article 9(4) of its Statute, to order, “[a]t any time during the proceedings (...) an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgment of the Dispute Tribunal”.<sup>4</sup>

32. It is well-established in the Appeals Tribunal’s jurisprudence that in order to grant interim relief, the Tribunal must be satisfied that (1) there is a real likelihood of irreparable harm which can be prevented if temporary relief is granted, and (2) the temporary relief granted would be consistent with the judgment of the Dispute Tribunal.<sup>5</sup> In this case, there is no judgment or decision from the JAB against which the Appeals Tribunal could evaluate the requested relief.

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<sup>3</sup> *Jonathan Hall, Khalilah Hackman, Giovanni Ardito v. Secretary-General of the International Seabed Authority*, Order No. 591 (2025).

<sup>4</sup> The Secretary-General did not raise as an objection that motions for interim relief are not permitted under the Special Agreement, and accordingly I do not reach that question here. *Cf. Rockcliffe v. United Nations Joint Staff Pension Board*, Order No. 288 (2017).

<sup>5</sup> *Qasem Abdelilah Mohammed Qasem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 519 (2023), paras. 8-9; *Koumoin v. Secretary-General of the United Nations*, Order No. 3 (2010), para. 9.

33. I do not find it necessary to address the argument that the Appeals Tribunal has, even in the absence of a first-instance decision, an inherent power to order interim relief in the most compelling of circumstances. Since the Secretary-General's submissions, the JAB was reconstituted, and a panel was appointed to consider the requests for suspension of action filed by Ms. Bourrel-McKinnon. Her Motion for Interim Measures has thus become moot and shall therefore be dismissed.

34. However, I note with concern that the JAB was dismantled temporarily without prior warning given to ISA staff members and with no reasons provided by the Administration. It is also alarming that the Administration dismantled the JAB with no successor in place, denying the staff members access to justice in the interim. While ISA submits that a new JAB has now been constituted, the temporary void rendered meaningless the JAB suspension of action mechanism which Ms. Bourrel-McKinnon had attempted to pursue before coming to the Appeals Tribunal.

35. Although the Appeals Tribunal dismisses the present case as moot, this ruling is without prejudice to Ms. Bourrel-McKinnon's rights to have her case considered on appeal once decisions by the newly established JAB have been issued.

**IT IS HEREBY ORDERED** that the Motions are **DENIED, without prejudice.**

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2025  
in Beirut, Lebanon.

*(Signed)*  
Judge Nassib G. Ziadé,  
President

Entered in the Register on this 26<sup>th</sup> day of  
February 2025 in New York, United States.

*(Signed)*  
Juliet E. Johnson,  
Registrar