



Council

Distr.: General
4 June 2007

Original: English

Thirteenth session

Kingston, Jamaica
9-20 July 2007

Considerations relating to the future size and composition of the Legal and Technical Commission and the process for future elections

Note by the Secretary-General

1. At the twelfth session, the Council requested the Secretary-General to prepare a report on considerations relating to the future size and composition of the Legal and Technical Commission for its consideration during the thirteenth session.¹ The present note responds to that request and makes some suggestions for streamlining the process for the next election, due to take place in 2011. The note is not concerned with elections to fill vacancies on the Commission in accordance with article 163 (7) of the United Nations Convention on the Law of the Sea, which have occurred in 1998, 1999, 2000, 2003, 2004 and 2005, and will continue to occur from time to time as necessary.

2. The Commission is established by article 163 (1) of the Convention as an organ of the Council. Members of the Commission are elected by the Council from among the candidates nominated by members of the Authority. Members of the Commission are required to have appropriate qualifications, such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. They are also required to have no financial interest in any activity relating to exploration and exploitation in the Area.² The Council is required to endeavour to ensure that the membership of the Commission reflects all appropriate qualifications.³ Members of the Commission shall hold office for a term of five years and are eligible for re-election for a further term.

¹ ISBA/12/C/11, also reproduced in *Selected Decisions 12*, p. 39 and 40.

² See article 163 (8) of the Convention and rules 11 to 13 of the rules of procedure of the Commission. To this end, before assuming their duties, members are required to make a written declaration witnessed by the Secretary-General or his or her authorized representative.

³ See article 165 (1) of the Convention.

I. Composition of the Commission

3. The Council has taken various steps to ensure that the membership of the Commission reflects an appropriate balance of qualifications and expertise. For example, at the second election of the Commission (2001), the Council requested the Secretariat to provide the Council with an indication of the likely programme of work for the Commission prior to each session, so that members of the Council could make informed judgements of the type of qualifications needed for members of the Commission.

4. At the twelfth session, the outgoing Commission was asked to share with the Council its experience on the expertise required by the Commission for its effective functioning. In response, the Commission stated that there was a need to preserve as wide a range of disciplinary expertise as possible. It specifically noted the need for specialists in certain key disciplines, including marine biology, mining engineering and mining economics. The Commission further acknowledged that it was unlikely to be able to provide every type of expertise in order to fulfil its wide remit of work. For this reason, the Commission recalled that, when necessary, expertise had been sought outside the membership by the Secretariat to bring additional specialist knowledge and skills to its work. This practice was viewed as an essential process, which should continue.

5. An information note on matters for consideration by the organs of the Authority has been circulated to all members of the Authority each year since 1997. The information note includes an overview of the workload of the Commission at each session of the Authority. Moreover, in 2004, the Assembly approved a work programme of the Authority for 2005-2007, which also contains information on the activities of the Commission. For the thirteenth session, the Secretary-General has prepared a briefing note for the incoming members of the Commission on the work of the Commission. That note also refers to the anticipated workload of the Commission over the next five-year period. Furthermore, at each session, the Council is informed of the work that the Commission carries out in a report that the Chairman of the Commission presents to the Council. The information provided indicates the nature of the expertise that the Commission needs in performing its activities.

6. There is no specific requirement in the Convention in relation to regional representation on the Commission. Instead, the Convention simply provides that due account shall be taken of the need for equitable geographical distribution and the representation of special interests.⁴

II. Size of the Commission

7. Under article 163 (2) of the Convention, the Commission shall be composed of 15 members. However, if necessary, the Council may decide to increase the size of the Commission, giving due regard to economy and efficiency. The Council has made use of that provision by increasing the size of the Commission in all three elections of the Commission to date.

⁴ See article 163 (4) of the Convention.

8. The first election of members of the Commission was held in August 1996, following the election of the first President of the Council. Following protracted and difficult negotiations on the election of the members of the Council and Finance Committee, the President of the Council proposed that the Council take advantage of the flexibility inherent in article 163 (2) of the Convention and increase the number of seats on the Commission from 15 to 22, without prejudice to future elections. The Council decided accordingly to have all 22 nominees elected by acclamation.

9. The same procedure was repeated in 2001 and 2006 for the two subsequent elections to the Commission. The Council decided to approve all the candidacies that were submitted for membership, increasing the number of seats on the Commission from 15 to 24 in 2001 and to 25 in 2006. On each occasion, this decision was said to be taken without prejudice to future elections to the Council and claims of the regional groups and interest groups. Although the Council did not record its reasons for deciding to increase the size of the Commission on each occasion, it is apparent that the decision was motivated less by the actual or perceived workload of the Commission than by the desire to avoid a vote and to accommodate late nominations.

10. It should be noted that, with 25 members, the size of the Commission exceeds the size of both the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf (each of which have 21 members). Furthermore, it should be noted that increasing the size of the Commission has certain cost implications for the Authority, including an increased demand on the Voluntary Trust Fund to defray the costs of the participation of members from developing countries.⁵

11. It should be noted that article 165, paragraph 1 of the Convention provides that members of the Legal and Technical Commission will have appropriate qualifications, such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise, and that the Council will endeavour to ensure that the membership of the Commission reflects all appropriate qualifications. The intent of the provision in article 163 (2) that the Council may decide to increase the size of the Commission was designed to ensure that any deficiencies in the expertise available to the Commission could be made up by including additional disciplines that were not represented by the original 15 members elected to the Commission. It was not meant to provide increases for political convenience. If the latter was the case, the Convention would have established a higher number for the membership, such as 21, as was done for the Tribunal and the Commission for the Continental Shelf.

III. Process for elections

12. Members of the Commission are elected by the Council. One difficulty is that nominations for membership are often submitted very late, making it difficult for members of the Council to fully evaluate the nominations. This may be contrasted

⁵ Since eight members of the Commission would need to be supported each year for the next five years, the cost implication for the Fund would be approximately \$41,200 per year.

with the process for the election of judges of the International Tribunal for the Law of the Sea, for which a clear timeline is laid out in the Statute of the Tribunal. Article 4 (2) of the statute provides that at least three months before the date of the election, the Registrar of the Tribunal should address a written invitation to the States Parties to the Convention, inviting them to submit nominations within two months. The Registrar then prepares a list in alphabetical order of all the persons thus nominated, with an indication of which States Parties have nominated them. The Registrar is required to submit that list to States Parties no later than the seventh day of the last month before the date of each election.

13. At the second election of the Commission in 2001, the Council decided that, for future elections to the Commission, in order to allow members of the Council adequate time to review the candidacies, nominations and curricula vitae of candidates for election should be submitted to the Secretary-General of the Authority not later than two months prior to the opening of the session at which the election is to take place.⁶ A similar process was followed for the election in 2006. On that occasion, the information note of the Secretary-General on matters before the twelfth session of the Authority, dated 5 May 2006, requested members of the Authority to submit the names and curricula vitae of candidates for election to the Commission by 9 June 2006 (two months prior to the session). Nominations were submitted through the Secretary-General and were accompanied by detailed curricula vitae. The Secretariat then arranged for details of the nominations to be circulated to all members of the Authority. Lists of candidates in alphabetical order, with an indication of their nationalities and the States members that had nominated them, were prepared by the Secretariat and circulated to members of the Authority.⁷ In addition, the details of nominations were posted on the website of the Authority as they became available.

14. Unfortunately, in spite of the Council's request, many nominations were received less than two months before the election on 14 August 2006. This contributed to the decision to increase the size of the Commission beyond 15. However, in the absence of a firm decision by the Council on a closing date for submissions and on the consequences of failing to submit a nomination in time, the Secretary-General considered that he had no discretion to reject the late nominations.

IV. Proposal for consideration by the Council

15. In the light of the difficulties that have been experienced in the conduct of previous elections of the Commission, it is recommended that the Council consider adopting clear guidelines for the conduct of future elections, based on the relevant provisions of the Statute of the International Tribunal for the Law of the Sea. Such guidelines should include the requirements that:

(a) At least six months before the opening of the session of the Authority at which the election is to take place, the Secretary-General will address a written invitation to all members of the Authority to submit their nominations for members of the Commission within three months. Late nominations will not be accepted;

⁶ ISBA/7/C/7, also reproduced in *Selected Decisions 7*, para. 6, p. 37.

⁷ ISBA/12/C/5, Corr.1 and Add.1 and 2.

(b) The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of which members of the Authority nominated them. The list will be submitted to members of the Authority no later than two months prior to the opening of the session at which the election is to take place.

16. Secondly, it is proposed that the Council should determine in advance that in the future, in the absence of any special justification relating to the expertise necessary for the proper functioning of the Commission, the Commission will be composed of 15 members, as provided in the Convention.
