



Council

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Considerations relating to the functioning of the Legal and Technical Commission

Note by the Secretary-General

1. Members of the Council will recall that, pursuant to article 163 (1), of the 1982 United Nations Convention on the Law of the Sea ("the Convention"), the Legal and Technical Commission was established as an organ of the Council. The Commission consists of 15 members, elected by the Council from among the candidates nominated by States Parties. Members of the Commission hold office for a term of five years and are eligible for re-election for a further term.

2. Following the previous regular election¹ of members to the Commission, which was held at the twelfth session, in 2006, the Council requested the Secretary-General to prepare a report on considerations relating to the future size and composition of the Commission for its consideration during the thirteenth session.² Subsequently, the Council decided that in order to avoid some of the difficulties that had arisen in connection with past elections to the Commission, it was necessary to streamline the procedures for future elections. Accordingly, in its decision ISBA/13/C/6 of 18 July 2007, the Council decided that the procedure for nominations of candidates for future elections to the Commission would be as follows:

(a) At least six months before the opening of the session of the International Seabed Authority at which the election is to be held, the Secretary-General shall address a written invitation to all members of the Authority to submit their nominations of candidates for election to the Commission;

(b) Nominations for election to the Commission shall be accompanied by a statement of qualification or curriculum vitae setting out the candidate's

¹ The present note is not concerned with elections to fill vacancies on the Commission in accordance with article 163 (7) of the Convention on the Law of the Sea, which have occurred every year since 1998 (except 2001 and 2002) and will continue to occur from time to time as necessary.

² ISBA/13/C/2.



qualifications and expertise in fields relevant to the work of the Commission and shall be received not less than three months prior to the opening of the relevant session of the Authority; nominations received less than three months prior to the opening of the relevant session of the Authority will not be accepted;

(c) The Secretary-General shall prepare a list in alphabetical order of the persons nominated for election to the Commission in accordance with paragraph (a) above, indicating the nominating member of the Authority, and containing an annex with the statements of qualification or curricula vitae submitted in accordance with paragraph (b) above; the list shall be circulated to all members of the Authority not less than two months prior to the opening of the session at which the election is to be held.

3. In the same decision, the Council also requested the Secretary-General, taking into account the views of the chairs of the Legal and Technical Commission, to prepare a report for consideration by the Council in 2010 on the functioning of the Commission, with a view to the Council determining in 2010 the number of members of the Commission to be elected in 2011. The present note responds to that request. In particular, the note considers the issues of the size and composition of the Commission and how these factors have affected the work of the Commission.

I. Size of the Commission

4. Under article 163 (2) of the Convention, the Commission is to 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 to the Commission to date.

5. The first election of members to 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 the 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.

6. 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, the 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.

7. 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). It should also be noted that

article 165 (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), whereby 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 for 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 were the case, the Convention would have established a higher number for the membership, such as 21, as was done for the Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf.

8. Furthermore, experience to date has shown that the number of members actually attending meetings of the Commission since 2003 has never exceeded 21 (see table 1). One effect of this is that the Commission has noted that it has not always been able to utilize all the expertise available from all its members.³ It is important therefore that Member States, when submitting nominations of candidates for election to the Commission, ensure that such candidates will be in a position to participate on a regular basis in the meetings of the Commission.

Table 1
Summary of attendance at meetings of the Legal and Technical Commission, 2003 to 2009

	<i>Total membership</i>	<i>In attendance</i>	<i>Unable to attend</i>
2003	24	18	6
2004	24	20	4
2005	24	19	5
2006	24	17	7
2007	25	20	4
2008	25	21	4
2009	25	20	3

9. One of the concerns expressed about increasing the size of the Commission was that any increase in membership would have significant cost implications for the Authority, including a potential increase in the demands on the Voluntary Trust Fund to defray the costs of the participation of members from developing countries. In 2007, it was estimated that approximately \$41,200 per annum would be needed to support the participation of such members (on the basis that 8 of the 25 members would need financial support). In practice, since 2004, the Voluntary Trust Fund has been used to support an average of six members per year at an average annual cost of approximately \$31,000 (see table 2).⁴

³ See ISBA/11/C/8, para. 29.

⁴ In comparison, in the same period only three members of the Finance Committee (which has 15 members) received support from the Voluntary Trust Fund each year.

Table 2

Summary of costs defrayed from the Voluntary Trust Fund towards supporting the participation of members of the Legal and Technical Commission in meetings of the Commission, from 2004 to 2009

(United States dollars)

<i>Year</i>	<i>Beneficiaries</i>	<i>Daily subsistence allowance</i>	<i>Airfare</i>	<i>Total</i>
2004	4	13 068.00	17 598.38	30 666.38
2005	7	18 640.00	17 470.32	36 110.32
2006	5	10 798.00	9 513.51	20 311.51
2007	6	14 579.00	11 463.72	26 042.72
2008	7	16 622.00	11 319.37	27 941.37
2009	9	26 457.00	18 943.52	45 400.52
Total	38	100 164.00	86 309.82	186 472.82

II. Composition of the Commission

10. In accordance with article 165 (1) of the Convention, members of the Legal and Technical Commission are required to possess “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”. There is no specific requirement in the Convention in relation to regional representation. Instead, the Convention simply provides that due account shall be taken of the need for equitable geographical distribution and the representation of special interests.⁵

11. The Council has taken various steps to ensure that the membership of the Commission reflect 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 on the type of qualifications needed for members of the Commission.

12. At the twelfth session (2006), 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 See article 163 (4) of the Convention.

13. 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, and again in 2008, the Assembly approved three-year work programmes for the Authority, which also contain information on the activities of the Commission and the anticipated workload over the next three-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.

14. In practice, it is evident that the members of the Commission have been drawn from a wide variety of disciplines, including law, marine biology, geochemistry, oceanography, geology, geophysics and engineering. It is also true, however, that some disciplines that may be of relevance to the work of the Authority, including mineral economics and commercial mining, have not been well represented on the Commission.

15. One issue to consider is the desirability of continuity in the membership of the Commission. Although members of the Commission may be re-elected for a second term, and many members have in fact served two terms of office, there is no provision to ensure continuity of membership as a whole. This may cause difficulties where, for example, an election is held when the Commission is part-way through dealing with a particular issue on which specialist knowledge is required. Because the entire membership of the Commission changes, there is very little continuity and changes in the balance of expertise on the Commission may then cause a delay in producing recommendations for the Council to consider. The system in many other bodies, including the Council itself, as well as the International Tribunal for the Law of the Sea, is for one half or one third of the membership to change at each election so that there is continuity of membership.

III. Recommendations

16. The Council is invited to take note of its decision ISBA/13/C/6, relating to the procedure for the nominations of candidates for future elections to the Commission and to apply this procedure to the forthcoming elections to be held in 2011.

17. The Council is further invited to give consideration to the issues identified in the present note and to provide any necessary direction relating to the size and composition of the Commission to be elected in 2011.
