



## Council

Distr.: General  
11 November 2016

Original: English

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### Twenty-third session

Kingston, 31 July-4 August 2017

## Election of members of the Legal and Technical Commission

### Report of the Secretary-General

1. In decision [ISBA/22/C/29](#) relating to the election of the members of the Legal and Technical Commission for the period from 2017 to 2021, the Council of the International Seabed Authority requested that the Secretary-General provide a report in which he would identify the ideal size of the Commission and propose a mechanism to ensure that future elections would be undertaken in a manner that better took into account all the considerations set out in the second preambular paragraph of the decision,<sup>1</sup> including equitable geographical representation. The present report responds to that request.

2. In accordance with article 163 of the United Nations Convention on the Law of the Sea, the members of the Commission are elected by the Council from among the candidates nominated by the States parties for a term of five years. States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission. Due account shall be taken of the need for equitable geographical distribution and the representation of special interests. In accordance with article 165, paragraph 1, of the Convention members of the Commission shall 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.

### Size of the Commission

3. Under article 163, paragraph 2, of the Convention, the Commission is to be composed of 15 members. Nevertheless, if necessary, the Council may decide to

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<sup>1</sup> The second preambular paragraph of [ISBA/22/C/29](#) reflects the language of article 163, paragraphs 3 and 4, of the Convention, and reads as follows:

*Recalling* article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that candidates nominated for the Commission shall have appropriate qualifications in the area of competence of the Commission and that in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests.



increase the size of the Commission, having due regard to economy and efficiency. The Council has made use of that provision by increasing the size of the Commission in all previous elections. It may be noted that each of the other two expert bodies of the Authority provided for in the Convention, the Finance Committee and the Economic Planning Commission, shall also have 15 members.<sup>2</sup>

4. The first election of the Legal and Technical Commission was held in August 1996. The Council took advantage of the flexibility provided in article 163, paragraph 2, of the Convention and decided, after protracted and difficult negotiations over the balance of regional representation on the Council, to increase the number of seats on the Commission to 22, without prejudice to future elections,<sup>3</sup> on the basis that 22 nominations had been submitted for the 15 seats available. The same procedure was repeated for the elections in 2001 and 2006. The Council decided to approve all the candidacies submitted, 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 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 was apparent that the decision had been motivated less by the actual or perceived workload of the Commission than by the desire to avoid a vote and to accommodate late nominations. On no occasion did the Council attempt an assessment of the actual needs of the Commission in terms of the number of members.

5. In 2011, in electing the members of the Commission for the period from 2012 to 2016, the Council recalled its decision relating to the procedures for election and expressed regret that some nominations had been received after the closing date. Nevertheless, the Council noted that, owing to the flexibility shown by members of the Council and regional groups, the total number of candidates for election did not exceed 25, as had been agreed by the Council in its previous decisions. The Council therefore decided, without prejudice to future elections, and having due regard to economy and efficiency, to increase the number of members of the Commission to 25. However, owing to the resignation in 2014 of one member, with no subsequent nomination of a replacement candidate, the membership of the Commission continued at 24.

6. In 2016, the Council again decided, on an exceptional and temporary basis, without prejudice to future elections, and with due regard to economy and efficiency, to increase the number of members of the Commission to 30, which corresponds to the number of nominations received by the closing date for nominations.

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<sup>2</sup> In a report issued in 2007 ([ISBA/13/C/2](#)), it was noted that the intent of the provision in article 163 (2) that the Council might decide to increase the size of the Commission had been designed to ensure that any deficiencies in the expertise available to the Commission could be made up by including additional disciplines that had not been represented by the original 15 members elected to the Commission. It had not been meant to provide increases for political convenience. If the latter had been the case, the Convention would have established a higher number for the membership, such as 21, as had been done for the Tribunal and the Commission for the Continental Shelf.

<sup>3</sup> Subsequently, an additional member from the Group of Latin American and Caribbean States was elected, bringing the actual membership to 23.

### **Composition of the Commission**

7. Article 165, paragraph 1, of the Convention entrusts the Council with the obligation to ensure that the membership of the Commission reflects all 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 are no specific requirements 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.

8. In previous elections, the Council has taken some steps to ensure that the membership of the Commission reflects an appropriate balance of such qualifications and expertise. For example, at the second election, in 2001, the Council requested the Secretariat to provide it with an indication of the likely programme of work for the Commission, so that members of the Council might make informed judgments of the type of qualifications needed for members of the Commission.

9. At the twelfth session, in 2006, the outgoing members of the Commission were asked to share with the Council their 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 needed to fulfil its wide remit of work. For that reason, the Commission recalled that, when necessary, expertise had been sought outside its members by the Secretariat to bring additional specialized knowledge and skills to its work.

10. In 2015, at the twenty-first session, the Commission reported to the Council that it had held a general discussion and exchange of views on its size and composition, in anticipation of the election of members for the period from 2017 to 2021 ([ISBA/21/C/16](#), para. 47). The Commission reported that it had generally been agreed that the current size of the Commission had allowed for a broad participation by members and that the general level of attendance had been satisfactory. It was noted that the future programme of work of the Commission would probably require more specific expertise relating to the economics of mining projects and marine technology to complement that of the Commission members. The Council took due note of the views expressed by the Commission, but did not make, at that time, any decision relating to the maximum size of the Commission.

11. The Secretariat has attempted to analyse the balance of expertise on the Commission by comparing the list of appropriate qualifications set out in article 165, paragraph 1, with the information provided by the members elected for the periods from 2012 to 2016 and from 2017 to 2021. The areas of expertise of the current members of the Commission are summarized in table 1.

Table 1  
**Areas of expertise of the members of the Legal and Technical Commission**

<i>Area of expertise</i>	<i>2012 to 2016</i>	<i>2017 to 2021</i>
Mineral resources (geology, geophysics, engineering)	10	14
Oceanology	5	1
Marine environment	2	4
Economy	1	1
Legal matters <sup>a</sup>	6	10

<sup>a</sup> “Legal matters” is a relatively broad category that covers many different aspects. On closer examination, it is apparent that most legally qualified members of the Commission have expertise in the law of the sea, diplomacy or international environmental law. Very few have expertise in mining law or commercial law.

12. The question of the balance of expertise on the Commission was considered in the context of the interim report presented by the consultants appointed for the purposes of the periodic review of the International Seabed Authority pursuant to article 154 of the Convention.<sup>4</sup> In their report, the consultants noted that a majority of the interviewed stakeholders considered the members of the Commission to be well qualified. However, respondents from all groups expressed concerns about the balance of expertise on the Commission. The result shows a potential lack of sufficient expertise in some areas, such as economics or subsea technical operations.

13. Article 163, paragraph 4, of the Convention provides that in the election of members of the Commission, due account shall be taken of the need for equitable geographic representation and the representation of special interests. “Special interests” in this sense refers to the interests reflected in the composition of the groups of States in the Council as set out in paragraphs 15 and 16 of section 3 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.<sup>5</sup> There is no agreed quota for regional representation and, in this regard, the Commission is in the same position as the committees of independent experts elected by members of the United Nations under the core international human rights treaties.<sup>6,7</sup>

<sup>4</sup> ISBA/22/A/CRP.3 (1).

<sup>5</sup> Further information regarding the composition of these groups may be found in the informal indicative lists of countries fulfilling the criteria for membership in the groups of States listed in paragraph 15(a) to (c) of section 3 of the annex to the Agreement compiled every two years by the Secretariat. The most recent such documents are ISBA/22/A/CRP.1 and ISBA/22/A/CRP.2.

<sup>6</sup> International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>7</sup> In all cases, due consideration is to be given to equitable geographical representation. Some of the later human rights treaties also require States to ensure balanced gender representation but, again, no quotas have been agreed.

14. Table 2 shows the historical distribution of seats on the Commission by regional groups.

Table 2  
**Membership of the Legal and Technical Commission by regional group**

<i>Term of office of the Commission</i>	<i>Africa</i>	<i>Asia-Pacific</i>	<i>Eastern Europe</i>	<i>Latin America and the Caribbean</i>	<i>Western Europe and Others</i>	<i>Total membership</i>
1997-2001	5	5	3	4	6	23
2002-2006	6	8	1	4	5	24
2007-2011	6	7	2	5	5	25
2012-2016	3	6	3	5	8	25
2017-2021	5	9	2	5	9	30

15. Table 3 shows the distribution of seats on the Commission by group of States represented on the Council.

Table 3  
**Membership of the Legal and Technical Commission by group of States<sup>8</sup>**

<i>Election year</i>	<i>Group<sup>a</sup></i>					<i>Non-members of the Council</i>	<i>Total membership</i>
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>		
1997	3	4	0	1	7	7	22
2002	4	3	2	3	7	5	24
2007	4	4	1	4	9	3	25
2012	4	4	0	4	9	4	25
2016	3	4	2	4	11	6	30

<sup>a</sup> Groups A to E correspond to the States covered in paragraph 15(a) to (e), respectively, of section 3 of the annex to the Agreement.

### **Participation in the work of the Commission**

16. No official records of attendance of members of the Commission were kept before the seventh session of the Authority. After the adoption by the Council of the rules of procedure of the Commission in 2000, the Secretariat began to maintain a definitive record of attendance. The record shows that, during the period from 2002 to 2006, attendance at meetings of the Commission averaged 76 per cent. Attendance during the period from 2007 to 2011 averaged 71.8 per cent, while attendance during the period from 2011 to 2016 averaged 83 per cent. While those statistics are encouraging, it may be noted that they conceal the fact that a small

<sup>8</sup> Analysis is based on actual membership of the Council by the State nominating each member of the Commission as at the date of election. Actual membership may have changed during the term of office of the Commission due to rotation of seats on the Council. States listed under the column “non-members of the Council” would have been eligible for election to one or more of the special interest groups in the Council, but are listed here as non-members.

number of elected members have not attended any meetings at all, and that some have attended only one or two meetings. It may also be noted that, since 2013, owing to its increased workload, the Commission has been meeting twice a year. This has presented a considerable challenge to some members of the Commission, who are not always able to attend both meetings in a year, either for financial reasons, or because they have other work commitments.

17. Members of the Commission from developing countries may be eligible for financial assistance from the Voluntary Trust Fund.<sup>9</sup> The actual expenditure from the Voluntary Trust Fund attributable to members of the Commission in 2015 amounted to \$64,743. Out of the 30 members of the new Commission, 11 members from developing countries may be eligible for assistance from the voluntary trust fund. The annual cost of such assistance, based on full participation in two meetings per year, is estimated at \$169,723. This represents an increase of \$104,980 over the actual expenditure from the fund in 2015.

#### **Procedure for the nomination of candidates**

18. One difficulty experienced in previous elections was that nominations were sometimes submitted very late, making it difficult for members of the Council to fully evaluate them. For the second election of the Commission, in 2001, the Council decided to adopt an approach similar to that followed for the election of judges of the International Tribunal for the Law of the Sea.<sup>10</sup> It decided that, for future elections to the Commission, in order to allow members of the Council adequate time to review the candidacies, the nominations and the curricula vitae of candidates 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 was to take place (ISBA/7/C/7, para. 6). A similar process was followed for the election in 2006. Unfortunately, in 2006, the Council's request notwithstanding, some nominations were received less than two months before the election. It was noted that, in the absence of a 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 had no discretion to reject the late nominations.

19. At the thirteenth session of the Authority, in 2007, the Council decided that the procedure for the nomination of candidates to the Commission would be as follows (ISBA/13/C/6):

(a) At least six months before the opening of the session of the 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 qualifications and expertise in fields relevant to the work of the Commission and

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<sup>9</sup> The rules governing the management and operation of the voluntary trust fund were last updated in 2003 and, at its meetings during the twenty-second session, the Finance Committee noted that there might be a need to review and update the rules. The Secretariat was tasked with providing a report to the Committee on this matter in 2017.

<sup>10</sup> Statute of the International Tribunal for the Law of the Sea, art. 4, para. 2.

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.

20. This procedure was followed for the elections held in 2011 and in 2016. For the latter, at the request of the Council, the letter from the Secretary-General to member States inviting the nomination of candidates also referred to the relevant criteria for candidate selection, including the fact that candidates must be independent, have no conflict of interest, possess technical expertise and be fully committed to participating in all meetings of the Commission.

### **Process for elections**

21. The procedure for elections to the Commission is set out in rules 56 and 77 of the rules of procedure of the Council. As a general rule, decisions shall be made by consensus. If all efforts to reach a consensus have been exhausted, decisions by voting shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers of the Council referred to in rule 56, paragraph 5.<sup>11</sup> Those candidates, not exceeding the number of member places available, obtaining in the first ballot the required two-thirds majority of those present and voting will be declared to be elected. If the number of candidates obtaining such majority is less than the number of members to be elected, there shall be additional ballots to fill the remaining places. The voting will be restricted to the candidates obtaining the greatest number of votes in the previous ballots to a number no greater than twice the places remaining to be filled.

### **Conclusion**

22. As far as the process for nomination of candidates for election to the Commission is concerned, it is recommended that the current practice of setting a clear timetable for nominations be continued for future elections. For the elections in 2016, all candidacies, except for one, were received in advance of the closing date stipulated. The Council followed the procedure it had adopted in 2007 and the late candidacy was not accepted.

23. In terms of the size of the Commission, there is evidence from the reports issued by the Commission itself that the Commission has functioned effectively with a membership of 24. There is no evidence as yet as to how a Commission composed of 30 members will function, and it is therefore not possible to make any

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<sup>11</sup> For the purposes of voting, each group of States elected under paragraphs (a) to (c) of rule 84 of the rules of procedure of the Assembly shall be treated as a chamber. The developing States elected under paragraphs (d) and (e) of rule 84 shall be treated as a single chamber.

recommendation in this respect. Nevertheless, it may be noted that the financial implications of a larger Commission in relation to the Voluntary Trust Fund can be estimated at approximately \$100,000 per year. The possibility of assistance from the Voluntary Trust Fund is critical to ensuring effective participation in the work of the Commission, as demonstrated by an increase in the average attendance rate between 2007 and 2016 from 71 to 83 per cent.

24. There are imbalances in the composition of the Commission, both in terms of equitable geographical representation and balance of expertise. Despite efforts by the Commission and the Council to broaden the range of expertise, these imbalances have increased. While member States should be encouraged to nominate candidates from a broader range of disciplines, there is no immediately obvious basis for allocating seats on the Commission in a way that satisfies all required criteria. One possible way to improve the balance of expertise would be to provide details on the required areas of expertise or specialities in the letter from the Secretary-General to member States inviting the nomination of candidates.

25. One way to improve the process for future elections would be for the Council to make another decision as to the size of the Commission to be elected the year preceding the election. In the event that more nominations are received than places are available, the Council, adhering to its decision on the nomination of candidates (ISBA/13/C/6), would then proceed to elect the agreed number of members by voting in accordance with rules 56 and 77 of the rules of procedure of the Council. This is in fact the general practice in most of the independent expert bodies elected by the States Members of the United Nations.

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