

Background note concerning the extension of the term of office of the current members of the Legal and Technical Commission and other related matters

1. The five-year term of office of the current members of the Legal and Technical Commission will expire on 31 December 2021.

2. The Council, which elects the members of the Legal and Technical Commission, is currently in the process of developing a process to govern the elections of the membership of the Commission. Ongoing consultations are led by Mr. Vladislav Kurbatskiy, the Facilitator appointed by the Council at its February meetings with a mandate set out in the decision of the Council (ISBA/26/C/9, annex).

3. As set out in the annex to that decision of the Council, the Facilitator prepared a first draft of a mechanism for the election of members of the Commission which was submitted for comments. In light of the comments received, the Facilitator has prepared a revised draft of a process to govern the election of members of the Commission. Currently, the Facilitator and the President of the Council are undertaking consultations, together with members of the Bureau, as to the way forward, taking into account the current uncertainties regarding the date of the next in-person meeting of the Council in 2021.

4. As part of those consultations, it was also taken into account that the Council decided in 2007 on the procedure for nomination of candidates for future elections of the Legal and Technical Commission as set out in the document ISBA/13/C/6. The procedure consists of a three-step timeline around nominations: (a) the invitation for nomination; (b) a period for submission of nominations; and (c) the circulation of a list of nominations.

5. In line with that procedure, and assuming that the election to the Commission for the period 2022-2026 will be held at the opening of the twenty-seventh session in July 2021, the Secretary-General must invite for nominations in January 2021. Nominations must be received not later than in April 2021. In May 2021, the list of nominations must be circulated.

6. An alternative to the election in July 2021 may consist in the one-year extension of the current membership of the Commission owing to the COVID-constraints on the progress of negotiations by the Facilitator in conjunction with the impossibility for the Council to hold in-person meetings since February 2020 and the impossibility to adopt a decision in July 2020 in line with operative paragraph 3 of the decision in ISBA/26/C/9. This would enable the Council to elect the membership of the Commission in 2022, applying the new mechanism and strictly adhering to the procedure for nominations of candidates (ISBA/13/C/6).

7. The resort to a one-year extension would not be unprecedented and would allow for the consideration of priority items at an advanced stage within the Legal and Technical Commission. For example, on 12 August 2020, the General Assembly of the United Nations adopted several resolutions and decisions, many reflecting pandemic-related restrictions, including the decision 74/566 "Extension of the term of office of the current members of the International Law

Commission and other related matters” (A/74/566). In that decision, the General Assembly of the United Nations decided to extend for one year — to 31 December 2022 — the terms of office of the current members of the International Law Commission (‘ILC’). The General Assembly expressly indicated that this should not serve as a precedent. The decision stressed that this was made on an exceptional basis, owing to the unprecedented circumstances arising as a result of the COVID-19 pandemic, and was without prejudice to article 10 of the Statute of the ILC¹ and did not constitute a precedent, either for the ILC or for other bodies of the United Nations with elected members. The decision was adopted taking into account the continuing situation concerning the coronavirus disease (COVID-19) in the near future.

8. Owing to the same unprecedented circumstances arising out of the COVID-19 pandemic, in combination with its effect on the possibility to progress the negotiations to find a consensus on a process governing the election of the Legal and Technical Commission in 2021, it is more important to stress the merits for resorting to this exceptional measure in the context of both the work of the Legal and Technical Commission and those negotiations. This is particularly necessary as progress on a mechanism for elections of the membership of the Commission has reached a stage which requires face-to-face negotiations which have not been possible since last February 2020.

9. In light of that combination of factors, the Council may contemplate the possibility of extending the terms of office of the current members of the Legal and Technical Commission for one year – to 31 December 2022 – without prejudice to article 163, paragraphs 6 and 7 of the United Nations Convention on the Law of the Sea. It is to be noted that the proposed extension of the terms of office would apply only to the members of the Commission and not to the members of the Finance Committee for which no negotiation on the composition is involved and whose terms of office will expire on 31 December 2021.

¹ The members of the International Law Commission shall be elected for five years. They shall be eligible for re-election.