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Development of an election mechanism for the Economic Planning Commission

Election mechanisms for members of the Economic Planning Commission

Note by the Secretariat

I. Introduction

1. This report is prepared pursuant to paragraph 2 of Council decision ISBA/30/C/17, which requests the secretariat to prepare a proposal, in consultation with the Legal and Technical Commission for technical input only, for consideration by the Council during the first part of its thirty-first session. The report is limited strictly to procedural mechanisms for election and does not address the future work programme, internal organization or substantive functioning of the Economic Planning Commission.

II. Background

2. The Economic Planning Commission is established as a subsidiary organ of the Council under articles 163 and 164 of the United Nations Convention on the Law of the Sea, and sections 1 and 7 of the annex to the 1994 Agreement relating to the Implementation of Part XI of the Convention (the 1994 Agreement).

3. In the two previous reports on the operationalization of the Economic Planning Commission to the Council,¹ the Secretary-General recalled that the Economic Planning Commission plays a central role in assessing the economic impacts of activities in the Area, particularly on developing land-based producer States, and in supporting the implementation of the economic assistance mechanisms envisaged under article 151 of the Convention and section 7 of the annex to the 1994 Agreement.

4. The Council has repeatedly emphasized the importance of operationalizing the Economic Planning Commission before the approval of the first plan of work for

* ISBA/31/LTC/L.1

¹ ISBA/27/C/25 and ISBA/30/C/11.

exploitation, whilst recognizing the need to address institutional, financial and procedural considerations with an evolutionary approach.

5. At its thirtieth session, the Council adopted a decision on the operationalization of the Economic Planning Commission (ISBA/30/C/17), recognizing the advanced stage of the negotiations on the draft regulations on exploitation of mineral resources in the Area and the need to ensure institutional preparedness for the transition to the exploitation phase. Therefore, the Council decided to initiate necessary steps with a view to operationalizing the Economic Planning Commission as a subsidiary organ of the Council in accordance with the relevant provisions of the Convention and the 1994 Agreement. Among other tasks, it requested the secretariat to conduct the current consultation with the Legal and Technical Commission to prepare a proposal for the election of members of the Economic Planning Commission.

6. The present report is submitted to the Legal and Technical Commission in that context, with a view to benefiting from the Commission's technical expertise and institutional experience, including its long-standing role in performing the functions of the Economic Planning Commission pursuant to the 1994 Agreement².

III. Work of the Legal and Technical Commission in performing the functions of the Economic Planning Commission

7. As required in the 1994 Agreement, the Legal and Technical Commission has to date performed the functions of the Economic Planning Commission, as provided for in the 1994 Agreement, pending a decision by the Council on the assumption of those functions by the latter. Thus, during the twenty-sixth session, the Legal and Technical Commission reviewed a study of the potential impact of polymetallic nodule production from the Area on the economies of the developing land-based producers of metals that were likely to be the most seriously affected and made several recommendations to the Council, including for the Council to consider addressing the substantive issues identified in the study.³

8. The Legal and Technical Commission also recommended that the Council consider initiating a process for establishing an economic assistance fund in accordance with the 1994 Agreement. The Economic Planning Commission will need to set the criteria for developing countries adversely affected by activities in the Area to access the fund.

9. In addition, the Legal and Technical Commission recommended that the Council considers whether the Economic Planning Commission should be operational before the approval of the first plan of work for exploitation, so as to be in a position to consider and study, in a structured and systematic way, the impacts on developing land-based producer States. In that regard, one of the tasks on which the Authority is to concentrate before the approval of a plan of work for exploitation is the study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those metals that are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work already done by the Preparatory Commission.⁴

10. Furthermore, the Economic Planning Commission is to review the trends of and factors affecting the supply, demand and prices of metals that will be processed from minerals that

² Annex Section 1 paragraph 4 of the 1994 Agreement states that – “the early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.”

³ ISBA/26/C/12, para. 17; ISBA/26/C/12/Add.1, paras. 17–19; Technical Study 32, <https://www.isa.org.jm/publications/21773/>

⁴ 1994 Agreement relating to the Implementation of Part XI of United Nations Convention on the Law of the Sea of 10 December 1982, annex, sect. 1, para. 5 (e).

may be derived from the Area, bearing in mind the interests of both importing and exporting countries, and in particular of the developing States among them.⁵

11. As recalled in ISBA/30/C/11, the operationalization of the Economic Planning Commission does not imply the immediate assumption of all its substantive responsibilities. Rather, it requires an evolutionary approach, beginning with the establishment of the Commission through the election of its members, followed by the adoption of its rules of procedure, the development of its initial workplan, and the gradual commencement of its substantive functions. The present report exclusively addresses the first of these steps, namely the establishment of the Commission through the election of its members.

IV. Election mechanisms of members of the Economic Planning Commission

12. In accordance with article 163, paragraph 2, of the Convention, and rule 77 of the Rules of Procedure of the Council,⁶ the Economic Planning Commission is to be composed of 15 members, elected by the Council from among candidates nominated by the members of the Authority. However, the Council may decide to increase the size of the Commission giving due regard to economy and efficiency.

13. According to article 163, paragraph 3, and article 164, paragraph 1, of the Convention, nominations are to be candidates of the highest standards of competence and integrity, with appropriate qualifications, taken collectively, in relevant fields such as mining, management of mineral resource activities, international trade or international economics.

14. Article 163, paragraph 4 of the Convention, and rule 78 of the Rules of Procedure of the Council, mandate that in the election of members of the Commission, due account shall be taken of the need for equitable geographical representation and the representation of special interests. In addition, article 164, paragraph 1, of the Convention requires that the Commission include at least two members from developing States whose exports of the categories of metals processed from minerals to be derived from the Area have a substantial bearing upon their economies.

15. Members of the Economic Planning Commission are to be elected by the Council for a term of five years. In this regard, the Secretary-General has recommended that the Council may wish to consider electing the members of the Commission during the session immediately preceding the year in which the Commission is to commence its mandate, which begins on 1 January of that year.

16. In preparing a proposal of mechanisms in the process of the election of the members of the Economic Planning Commission, the Secretary-General has been guided by the relevant provisions of the Convention and the 1994 Agreement, mentioned in previous paragraphs, existing procedure and practice within the Authority with respect to elections to subsidiary organs of the Assembly and of the Council, and the need to ensure transparency, inclusiveness and sufficient time for Member States to nominate suitably qualified candidates.

17. The Secretariat is of the view that the election of the members of the Economic Planning Commission could follow the procedures applied by the Assembly for the election of the members of the Finance Committee and by the Council for the members of the Legal and Technical Commission, with appropriate adaptations reflecting the specific mandate, composition and qualification requirements of the Economic Planning Commission.

18. In this regard, the Legal and Technical Commission may wish to consider that the mechanisms for the election of the members of the Economic Planning Commission could include, *inter alia*, the following set of election mechanisms:

⁵ Convention, art. 164, para. (2) (b), and 1994 Agreement, annex, sect. 1, para. 5 (d).

⁶ ISBA/C/12

- a) A written invitation by the secretariat, on behalf of the Council, issued at least four
- b) months prior to the election at the meeting of the Council, inviting all Member States to submit nominations for membership of the Economic Planning Commission of candidates of the highest standards of competence and integrity;
- c) Along with the written invitation, the secretariat will include a list of developing States whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies and a list of developing States Parties representing special interests. Any list of special interests would be indicative rather than determinative;
- d) Nominations for election to the Commission shall be accompanied by a statement of qualifications or a curriculum vitae detailing the candidate's competence, experience and expertise such as those relevant to mining, management of mineral resource activities, international trade or international economics, and shall be received by the secretariat at least two months prior to the date of the election;
- e) The preparation by the secretariat of a consolidated list, in alphabetical order, of the persons nominated for election to the Commission, indicating the nominating Member State of the Authority, with an annex containing the statements of qualifications or curricula vitae of the nominees;
- f) The circulation by the secretariat, at least six weeks in advance of the election, of the consolidated list of nominees submitted by Member States, together with the corresponding statements of qualifications or curricula vitae, to all members of the Council;
- g) In accordance with article 163, paragraph 5, of the Convention, and rule 79 of the Rules of Procedure of the Council, no State party may nominate more than one candidate for election to the Commission and no person shall be elected to serve on more than one Commission;
- h) Members of the Commission shall hold office for a term of five years and they shall be eligible for re-election for a further term, in accordance with article 163, paragraph 6, of the Convention, and rule 80, paragraph 1, of the Rules of Procedure of the Council;
- i) The conduct of the election by the Council in accordance with its Rules of Procedure, including rule 56 and section XIV, "Elections to the Economic Planning Commission and Legal and Technical Commission" -rule 77 to rule 82 of the Rules of Procedure of the Council,⁷ and established voting practices;
- j) The general rule that decision-making in the Council should be by consensus, according to rule 56, paragraph 1, of the Rules of Procedure of the Council;
- k) In accordance with rule 56, paragraph 2, and rule 77, paragraph 3, if all efforts to reach a decision by consensus have been exhausted, the election of the members of the Commission or the increase of its size, 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 referred to in rule 56, paragraph 5, of the Rules of Procedure of the Council;
- l) The application of the criteria set out in article 163, paragraphs 2 and 4, article 164, paragraph 1, of the Convention, and rules 81 and 82 of the Rules of Procedure of the Council, including the requirements relating to qualifications, equitable geographical representation, representation of special interests and the representation of developing States whose economies are substantially affected by exports of the relevant categories of metals;

⁷ ISBA/C/12

19. In line with decision ISBA/30/C/17, the secretariat seeks the recommendation of the Legal and Technical Commission on the above elements for the election mechanisms, including any lessons learned from its own election processes and from its experience in performing the functions of the Economic Planning Commission to date.

V. Recommendation

20. The Legal and Technical Commission is invited to:

- a) Consider the proposed elements of the mechanisms for the election of the members of the Economic Planning Commission, as outlined in the present report; provide technical input on the mechanism in accordance with paragraph 2 of decision ISBA/30/C/17, including any refinements it may consider appropriate in light of the Commission's expertise and experience.