

Ensuring Inclusivity in the UN ILC Functioning:

74th Session - exclusion of Asia, Newly Elected Members and Concentration of Power, Roles and Responsibilities in 5 members from the previous quinquennium

1. ILC 2023-27 quinquennium 74th can be a good case-study as to how a particular group of countries or particular group of members are excluded.
2. Current ILC has 34 members (Africa – 9; Asia – 8; East Europe – 3; GRULAC – 6 and WEOG – 8). 18 out of 34 are new members (Africa – 6; Asia – 6; East Europe – 1, GRULAC – 2 and WEOG – 3)
3. As far as the current composition of Chairperson of the Commission, Chairs of Working Groups and Special Rapporteurs are concerned, the position is as follows: 2 Chair from WEOG (split-chair for the first time in the ILC history); 2 Special Rapporteurs from Africa, 2 from Latin America and 2 from Western Europe (including one proposed). Besides, 1 Chair of Working Group from WEOG, 1 Chair of Open-Ended Working Group from WEOG. **No Asian representation in internal decision or policy-making body except Bureau, thanks to one-region-one-member unwritten rule.**
4. Nilufer Oral (Turkey-WEOG) Chair of ILC, Co-Chair of Sea-Level Rise and International Law and Chair of Open-Ended Working Group on Piracy and Armed Robbery topic. Patricia Galvao Teles (Portugal-WEOG) Chair of ILC and Co-Chair of Sea-Level Rise and International Law. August Reinisch (Austria-WEOG) Special Rapporteur on Settlement of Disputes to which international organisations are parties and Chair of Working Group on Succession of States in respect of State Responsibility. Marcelo Vasquez-Bermudez (Ecuador-GRULAC) Special Rapporteur of General Principles of Law and Chair of Working Group on Long-Term Planning. Charles Jalloh (Sierra Leone-Africa) Special Rapporteur of Subsidiary Means for

determination of Rules of International Law and Chair of Working Group on Working Methods. **No Asian representation as far as substantive agenda and output of the Commission in this quinquennium is concerned.**

5. The above facts and figures lead to three concluding remarks. 1. **Asia is completely excluded** from internal decision and policy-making mechanisms except one member due to one-region-one-member rule. It is instructive to note that February 2023 meeting inviting Asian members chaired by the Chair of the Commission specifically had one agenda question – how to increase representation of Asia. The whole process of excluding Asia from potential role as Chair from the State Succession with respect to State Responsibility, despite nomination, support and willingness, can be seen as deliberate strategy to achieve the aim of excluding Asia. 2. **Five** (3 out of WEOG) and 2 (one each from GRULAC and Africa) (14%) are holding substantive and decision-making chairs, i.e. running the most substantive agenda of the Commission for next five years by setting the agenda. 3. **17 / 50% of new members are completely excluded from any substantive roles and responsibilities (one is a member of Bureau due to one-region-one-member unwritten rule).**
6. As far as SRs are concerned, out of 67 SRs (32 or 48% from WEOG; GRULAC 11 of 17%, Africa and East Europe 9 each or 14% and Asia 5 or 7%).
7. SR representation (5=Japan-3, India-1, Thailand-1); Africa (9= Algeria-1, Cameroon-1, Cote d' Ivoire-1, Egypt-1; Morocco-1, Senegal-1, Sierra Leone – 1, South Africa – 2); GRULAC (11 = Argentina-1, Colombia-1, Cuba-1, Ecuador-1- Colombia-1, Mexico-3, Panama-1, Venezuela-2); EEG (9 =Bulgaria-1 Czech Republic-3; Hungary-1, Poland-1, Russian Federation-2, Fmr Yugoslavia-1); WEOG (32 = Australia-1, Austria-1, Finland-1, France

- 3, Germany – 1, Greece-1, Italy-3, Netherlands-2, New Zealand-1, Norway-1, Spain-1, Sweden-2, Switzerland-1, UK-7, USA-6).
8. The above analysis suggests that 15 WEOG countries have SRs, thus, a very good WEOG representation within the Commission and same applies for Africa and Latin America each with 8 countries having SR, EEG with 6 countries and Asia only 3 countries as SR). The Commission has stressed upon the need for equitable representation on several occasion although, there appears to be a limited intention to actually realize such representation.
 9. On the representation within the Chairs for the Long-term Programme of Work of the Commission, the chairs since the 1990s have been occupied by WEOG – 3 times; GRULAC – 2 times; Africa Group – 1 time; and Asia Group – 1 time. **The spread of the chairs even on this matter has been far from equitable distribution.**
 10. The above also means that, firstly, credibility of the final product and functioning of the Commission continues to suffer from lack of Asian representation. Secondly, since 5 members in the current quinquennium are holding more than one substantive responsibility, efficiency and quality of the work are likely to suffer and actually has suffered in this Session, ultimately affecting the high standards of quality work expected of the Commission and since no new member is given any opportunity in the first year which has set agenda almost for the whole quinquennium, there is an inclusivity deficit.
 11. Further, the tradition of regional diversification has been a long-standing tradition of the ILC and has been re-iterated through the decades most prominently on the 50th Anniversary of the ILC in 1998 where the Commission in para 186 stated, 'In practice special rapporteurships tend to be distributed among members from different regions. This system, provided that it is applied with some flexibility, has many advantages, in particular in that it helps to ensure that different approaches and different

legal cultures are brought to bear in the formulation of reports and proposals.' On the occasion of the 70th Anniversary, the issue of regional diversification was further stressed upon and was augmented by recognising that the, 'competence and ability to perform the work expected of a Special Rapporteur be the decisive criterion in the selection of the Commission.' **It appears that the 74th Commission thinks otherwise for the Asia Group.** In this regard, I believe that the Commission must give its reasons for diverging in a deliberate way its long-standing traditions of promoting regional diversification.

12. **What can be done to address the continuous imbalance?** One. All current SRs shall have Co-Rapporteurs from unrepresented region, starting with Asia. Second, all working groups shall have co-chair from the unrepresented region, starting with Asia and new members. Third, before taking any long-term decision, positive affirmation shall be given to unrepresented region or new members, as appropriate. It can be argued that current composition is fixed and decided and cannot be changed, but since, there are no approved rules and methods, how the Commission's internal functioning works, the Commission shall take a decision as a whole instead of the Bureau which cannot do the job due to conflict of interests. 74th Session has set a precedent by having two chairs from the WEOG to promote gender diversity. The precedent can be used to overcome this long-standing goal of the Commission, if it genuinely is concerned about its lack of regional representation.
13. The member States and the Commission, despite the call of diversity, representation, inclusivity, continues and will continue to suffer even during this quinquennium from the above deficits.
14. Finally, since there has been no debate on this topic and as the issue is sensitive and requires urgent attention, this note shall be circulated to all members of the Commission and the final report shall include the same as

an attachment. Summarising does not work as it excludes vital facts and figures and ends up becoming another ‘routine reminders’. The Commission may also consider drawing special attention to the document which shall be made available on the website, along translation, in case if the Report needs to be less lengthy for technical reasons.