CHAPTER 4

Legitimacy of the Commission and Its Decision-Making

4.1 Introduction

The empowerment of institutions with wider functions and competences in the sphere of international governance has been a main reason for the growing interest in the legitimacy of such institutions.\(^1\) The previous chapter showed that the Commission has gained important functions and competences

under the LOS Convention. These findings—combined with the fact that the Commission is now dealing with an increasing number of continental shelf submissions—prompt a discussion of the Commission in terms of legitimacy as well.

This chapter examines the legitimacy of the Commission and its decision-making, specifically possible legitimacy deficits in the Commission's composition and decision-making. We ask, is there a proper balance between the Commission's functions and competences on the one hand, and its composition and procedures on the other?

To date, little attention has been given to these questions in the legal literature. Most have focused on hard-core legal issues, such as those raised in the previous chapter, as well as issues related to the application of the substantive definition of Article 76 in various maritime regions of the world, such as in the Arctic Ocean. Much less attention has been paid to potential weaknesses in the institutional structure and procedures of the Commission. Thus, a broad and critical study of the legitimacy of the composition and the work of the Commission based on recognized criteria will, it is assumed, be a useful addition to the current literature.

The following discussion of the composition and procedures of the Commission can be read as a self-standing analysis of legitimacy. However, the examination also relates to the material covered in the previous chapter. Indeed, more reference to the Commission as regards its composition and procedures might be relevant also for analysing, say, the legal effects of its recommendations. While these issues are interrelated I have chosen to split the two analyses because I see them as two basically different conceptual inquiries. Chapter 3 applies standard treaty interpretive analysis to an examination of the legal aspects of the Commission's decision-making, whereas the discussion of legitimacy in this chapter is essentially an institutional study.
