



## BRIEFING

### UN GENERAL ASSEMBLY PROCESS AND THE NEED FOR A BBNJ PREPCOM (Updated October 2023)

#### **Why would a Preparatory Commission be advisable for BBNJ?**

The BBNJ Agreement leaves many key decisions for the future operation of the Agreement to be decided at the first Conferences of the Parties (CoP), including rules of procedure and modalities for its subsidiary bodies. Producing and adopting these key documents, without drafts to consider and prior opportunities for Party consultations, would take a large amount of time away from the first (and likely subsequent) CoPs. This would not only delay the full implementation of the BBNJ Agreement, but also make it harder for States to meet other international commitments, such as the Kunming Montreal Global Biodiversity Framework (GBF) Target 3 for the protection of 30% of marine and coastal areas by 2030.

Establishing a Preparatory Commission (PrepCom) via a United Nations (UN) General Assembly resolution would be advisable to prepare these types of documents prior to the first BBNJ CoP, following precedents set by other agreements<sup>1</sup>. A PrepCom would thus contribute to a rapid operationalization of the BBNJ Agreement once it enters into force.

#### **What are the tasks allocated to the first meetings of the CoP?**

The following is a list of key decisions and actions to be taken by the first or a subsequent meeting of the CoP in order to fully establish and operationalize the subsidiary bodies of the BBNJ Agreement:

- Conference of the Parties: Rules of procedure for itself and subsidiary bodies, financial rules for itself and subsidiary bodies (Article 47, paragraph 4)
- Scientific and Technical Body: Membership, including selection procedure, terms of reference and modalities (Article 49, paragraph 2) and rules of procedure.
- Secretariat: Arrangements for the functioning of the permanent secretariat, including deciding on its seat (Article 50, paragraph 1)
- Clearing House Mechanism: Modalities for operation (Article 51, paragraph 2), managed by the Secretariat (Article 51, paragraph 4) and rules of procedure.
- Access and benefit-sharing committee: Terms of reference and modalities (Article 15, paragraph 2) and rules of procedure.

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<sup>1</sup> For example, UN PrepCom, 1945, UNCLOS/ISA PrepCom, 1982

- Capacity building and transfer of marine technology committee: Membership, terms of reference and modalities (Article 46, paragraph 2) and rules of procedure.
- Funding-related issues: Arrangements with GEF to operate as part of BBNJ's financial mechanism (Article 52, paragraph 10), establishment, membership, terms of reference and modalities for the finance committee (Article 52, paragraph 14)
- Implementation and Compliance Committee: membership, modalities (Article 55, paragraph 3) and rules of procedure

### **What modalities would a PrepCom require to function well?**

A PrepCom would need the support of an interim-Secretariat, for which the Division of Ocean Affairs and Law of the Sea (DOALOS) has already been designated<sup>2</sup>. Expenses could be met from the regular budget of the UN, subject to necessary approval by the UN General Assembly (see the timeline below). The PrepCom could continue using the Rules of Procedure of the Intergovernmental Conference or develop its own rules of procedure.

### **What could be key priorities for the PrepCom's work?**

Some of the necessary decisions will affect the early functioning of the Agreement more than others. It is also important to maintain equity across the main pillars of the Agreement. Key priorities could include:

- Developing rules of procedure, draft agenda and draft budget for consideration at the first CoP
- Laying the groundwork for the establishment of:
  - the Scientific and Technical Body;
  - the Access and Benefit Sharing Committee; and
  - the Capacity-building and Transfer of Marine Technology Committee.
- Developing draft modalities and the guidance needed to operationalize the Treaty, including for the Clearing House Mechanism

### **How many Prepcoms would be required?**

There are expectations that DOALOS will draw up the necessary documentation. However, DOALOS has repeatedly stressed that it can only do initial drafting and will need policy guidance by UN Member States to advance further. One may reasonably expect that at least two Prepcoms will be required. The Paris Agreement, for example, had four Prepcoms ("Ad hoc working group on Paris Agreement" (APA)): one per year for two years and two in the final year.

### **Why is establishing a PrepCom via a UN General Assembly resolution urgent?**

As time passes, it will become increasingly difficult to find resources and suitable times to hold a PrepCom. While there are different levels of formality that a PrepCom could take, all options are likely to have financial and programmatic implications for the interim Secretariat and DOALOS.

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<sup>2</sup> [UN General Assembly Resolution A/RES/77/321](#)

All UN GA Resolutions with Programme-Budgetary-Implications (“PBI”) have to go through the UN General Assembly’s budgetary process. This includes a review by the Advisory Committee on Administrative and Budgetary Questions (ACABQ), which convenes three sessions per year: a fall session, a winter session and a spring session, and subsequent consideration by the Fifth Committee (budgetary committee) of the UN. Due to this process the [official FAQ of the fifth committee](#) advises that:

*At least 48 hours are required before action can be taken on a draft resolution containing budgetary implications so that the Secretary-General can prepare the PBI and ACABQ can consider it. For this reason, there is a deadline of no later than 1 December for draft resolutions with financial implications [for the following year] to be submitted to the Fifth Committee (see paragraphs 12 and 13 of decision 34/401 (A/520/Rev.18, annex V).*

As of 24 October 2023, [the work programme of the Fifth Committee](#) has the final informal consultations on the Programme planning / Proposed programme budget for 2024 scheduled even earlier, namely on 28 November 2023.

Meeting these deadlines presents the only option for the UN General Assembly to approve the financial and programmatic resources for PrepCom activities in the first months of 2024. The next possibility to start the UN General Assembly process would be at the ACABQ spring session.

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