Observer participation

Briefing: BBNJ PrepCom
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Executive Summary

The Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) was adopted on 19 June 2023.

To prepare for the Treaty's entry into force and its first Conference of the Parties (CoP), a UN Preparatory Commission (PrepCom) is scheduled to meet twice in 2025 (14 - 25 April and 18 - 29 August) and at least once in 2026 (23 March – 2 April 2025). During these meetings, Parties will develop the operational framework for the Agreement to ensure it can function and work effectively, and prepare recommendations for the CoP. Well-structured, fair, and efficient institutions will shape the Treaty's long-term success and determine how quickly we can turn global ambition into tangible results for ocean protection.

This briefing paper examines the provisions on observer participation and transparency in the BBNJ Agreement and those under consideration for the Rules of Procedure of the BBNJ CoP. It draws on best practices and lessons learned from other relevant instruments, frameworks, and bodies (IFBs) and includes textual suggestions based on the Co-Chairs' revised aid to negotiations.[1] These recommendations should be applied mutatis mutandis to observer modalities for the Agreement's subsidiary bodies.

Recommendations on observer participation for consideration:

- Support a default open access approach to meetings of both the CoP and its subsidiary bodies by amending Rule 33 in the revised aid to negotiations to include the phrase 'and its subsidiary bodies'.
- Amend Rule 33 in the revised aid to negotiations to require a two-thirds majority of the CoP (or of the relevant subsidiary body) for decisions to hold closed meetings and ensure that such decisions are time-bound and limited to exceptional circumstances.
- Amend Rule 7 or 33 in the revised aid to negotiations to clarify that observers must continue to have access to relevant information, even when meetings of the CoP or its subsidiary bodies are held in closed sessions.
- Introduce an objection mechanism for observer participation only if needed and require support from either a simple majority of Parties or a two-thirds majority.
- Establish a separate participation process for Indigenous Peoples and local communities (IP&lc), based on the preliminary consultations with their representatives.
- Remove the bracketed language in Rule 7.1 of the revised aid to negotiations, which permits observer admission only upon invitation by the President of the CoP.

[1] Provisional Program of Work of the Preparatory Commission. U.N. Doc. A/AC.296/2025/L.2. 23 December 2024 at https://docs.un.org/en/A/aC.296/2025/L.2

1. PrepCom 1 discussions on transparency and observer participation

The provisions and modalities for transparency and observer participation in the meetings of the BBNJ CoP and its subsidiary bodies were among the actively debated topics during PrepCom 1 in April 2025.

Delegates were broadly supportive of the importance of observer participation and the need to incorporate transparency in the Rules of Procedure, in line with the provisions of article 48 of the BBNJ Agreement and the practices set by the Intergovernmental Conferences (IGCs) during the Treaty's negotiation process. However, there were concerns about the insufficient level of detail on how to implement these provisions in the Co-Chairs' aid to negotiations.

Procedures for granting observer status and the modalities of observer participation in meetings of the CoP and its subsidiary bodies were among the specific issues identified by Parties as warranting further attention and debate. Furthermore, many delegates emphasized the need to pay particular attention to the modalities of observer participation for IP&lc representatives and to consider them separately to ensure inclusivity.

Different views were expressed on whether and how the procedure for objecting to observer participation should be reflected in the CoP's Rules of Procedure. One proposal - to subject the participation of non-governmental organizations (NGOs) and IP&lc observers to a non-objection procedure - raised particular concern because it would allow a single State to block their involvement by raising an objection.

Given that many delegations expressed a clear interest in continuing discussions on developing observer participation modalities, the issue is likely to remain on the agenda at PrepCom 2 in August 2025 and beyond.

2. Considerations for Parties on enhancing transparency and observer participation

Article 48 of the BBNJ Agreement explicitly calls on the CoP to 'promote transparency in decision-making processes and other activities carried out under this Agreement' and to ensure that the modalities for observer participation are not 'unduly restrictive'. These principles are reinforced by the growing recognition within international and regional frameworks of the critical role public engagement plays in effective environmental governance. Established practice under comparable agreements - both multilateral environmental agreements (MEAs) and regional fisheries management organizations (RFMOs) - further supports the need to expand observer access to meetings and ensure meaningful opportunities to contribute expertise and engage in discussions.

Enabling observer participation enhances accountability, brings in diverse perspectives and expertise from a broad range of stakeholders, and fosters trust in institutions. Ultimately, this leads to higher-quality international decision-making, more informed policies, and better environmental outcomes.[2] To support effective policymaking under the BBNJ Agreement, the provisions on observer participation and transparency should ensure inclusivity, broad access to meetings and information, and opportunities to contribute expertise.

To that end, the Rules of Procedure for the BBNJ CoP should establish open access as the default principle for all meetings of both the CoP and its subsidiary bodies. Furthermore, they should require that any decision to close a meeting is limited to exceptional circumstances and subject to a rigorous approval process by Parties. Even when meetings are closed, observers should still have access to relevant information and the opportunity to submit informational papers.

[2] Nadia S. Castillo-Winckels, Observer Participation in International Climate Change Decision Making: A Complementary Role for Human Rights?, 31 Colo. Env't L. J. (2020); Ebbesson, Jonas, Principle 10: Public Participation; Jorge E Viñuales (ed.), The Rio Declaration on Environment and Development: A Commentary, Oxford Commentaries on International Law (2015); Thomas Bernauer, Robert Gampfer, Effects of civil society involvement on popular legitimacy of global environmental governance, Global Environmental Change, Volume 23, Issue 2, (2013).

Any unnecessary restrictions on observer access to meetings or related materials should be avoided, particularly those that could enable politically motivated exclusion or unjustified censorship of legitimate stakeholders, such as the non-objection approach referenced above. By its very nature, such a constraining approach would represent a significant step backwards for inclusivity and transparency and be unduly restrictive and inconsistent with the BBNJ Agreement's core commitment to broad and equitable stakeholder engagement.

Should Parties decide to include an objection procedure for observer participation in the implementing provisions, they should adopt an approach aligned with best practices and international standards from comparable IFBs by requiring support from a simple majority of Parties to object to an observer's participation. Alternatively, Parties may consider applying a two-thirds support threshold.

While developing the provisions that implement the BBNJ Agreement's commitments on observer participation and transparency, it is essential to recognize the distinct role and status of IP&lc representatives within the BBNJ process. The Agreement acknowledges the value of IP&lc representatives' knowledge and expertise throughout its text, including in the Preamble's reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Indigenous Peoples hold internationally recognized, distinct rights and have a clear and legitimate standing to participate in BBNJ-related deliberations under both the letter and spirit of the Agreement. While local communities do not hold the same legal status under international law, they bring critical place-based knowledge that can enrich discussions and should, therefore, be afforded meaningful opportunities to contribute. To ensure IP&lc's interests are fully accounted for, modalities to ensure meaningful and inclusive participation must be developed with the full and effective participation of Indigenous Peoples and with input and engagement of local, or coastal community representatives. This would be consistent with Indigenous Peoples' status as rights-holders rather than observers and, therefore, should be regarded as separate from other observers, including NGOs.

Considering their special status under the BBNJ Agreement, any provisions that complicate the access of IP&lc representatives to BBNJ-related meetings can and should be interpreted as unduly restrictive, as should the lack of a separate, well-established process for their participation.

3. International approaches and evolving standards on transparency and observer participation

Principle 10 of the Rio Declaration affirms that environmental issues are best addressed with the participation of all concerned citizens and establishes the right to access environmental information held by public authorities.[3] These principles are reaffirmed by the UNECE Aarhus Convention[4] and the Chisinau Declaration, which not only bind Parties to uphold them in national and international contexts, but also call for their extension to other international legal instruments, decision-making processes, and multilateral institutions, thereby paving the way for the universal application of Principle 10.[5,6]

Building on this foundation, the Almaty Guidelines, developed under the Convention, promote the application of these principles in international forums.[7] They state that participation of the concerned public should be as broad as possible, and that international forums - or processes within them - should, in principle, be open to such participation.[8]

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[3] Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Principle 10.

[4] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), adopted by United Nations Economic Commission for Europe, Aarhus, Denmark, 25 June 1998, Preamble, Article 1, Article 3.2, Article 3.9, Article 6.

[5] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, (Aarhus Convention), adopted by United Nations Economic Commission for Europe, Aarhus, Denmark, 25 June 1998, Article 3.7.

[6] Chisinau Declaration, Fourth session of the Meeting of the Parties to the UNECE Aarhus Convention, 29 June - 01 July 2011, Chisinau Republic of Moldova.

[7] Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, Second session of the Meeting of the Parties to the Aarhus Convention, 25 - 27 May 2005, Almaty, Kazakhstan, paragraph 19.

[8] Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, Second session of the Meeting of the Parties to the Aarhus Convention, 25 - 27 May 2005, Almaty, Kazakhstan, paragraph 30.

The Guidelines underscore that public participation enhances the quality of decision-making in international environmental forums by contributing diverse perspectives and expertise, and by strengthening transparency and accountability.[9]

These commitments to transparency and public participation are also reflected in broader international frameworks. The 2012 Rio+20 Outcome Document, The Future We Want, reinforces the need to enhance the participation and effective engagement of civil society and other relevant stakeholders in international forums. It further calls for the promotion of transparency, inclusive public participation, and partnerships in the implementation of sustainable development.[10]

4. Provisions on observer participation and transparency in other IFBs

A review of relevant provisions within comparable legal IFBs shows that the standard practice on observer participation and transparency includes, inter alia: access to the agenda and all documents submitted by delegations; the ability to make interventions; and the right to circulate informational materials. Observers do not participate in decision-making and have no voting rights. Their role is limited to providing informational and expert support, while decision-making authority remains with the Contracting Parties or Member States. Observer participation does not, therefore, come at the expense of state leadership but offers states the opportunity to draw on additional expertise.

Even when IFBs have formal objection procedures related to observer participation, a non-objection approach is very rare. In most modern MEAs and RFMOs, an objection must be supported either by a simple majority of Parties (e.g., NPFC[11], SEAFO[12], SPRFMO[13], and WCPFC[14]) or by one-third of Parties (e.g., CBD[15], CITES[16], CMS[17], Aarhus[18], and ICCAT[19]). Some IFBs (e.g., CCSBT[20], NAFO[21], and SEAFO[22]) also require objections to include a detailed explanation. Even when meetings are closed, certain IFBs (e.g., GFCM[23], ICES[24], and IOTC[25]) still allow limited observer participation under separately defined conditions.

[9] Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, Second session of the Meeting of the Parties to the Aarhus Convention, 25 - 27 May 2005, Almaty, Kazakhstan, paragraph 28.
[10] Outcome Document of the United Nations Conference on Sustainable Development, "The Future We Want," Rio de Janeiro, 20–22 June 2012, paragraph 76(h).
[11] The North Pacific Fisheries Commission (NPFC), Rules of Procedure of the Commission, Rule 9.3.
[12] The South East Atlantic Fisheries Organization (SEAFO), Rules of Procedure of the Commission, paragraph 38(k)
[13] The South Pacific Regional Fisheries Management Organization (SPRFMO), Rules of Procedure of the Commission, Rule 9(2).
[14] The Western and Central Pacific Fisheries Commission (WCPFC), Rules of Procedure of the Commission, Rule 36.4.
[15] Convention on Biological Diversity (CBD), Rules of Procedure for Meetings of the Conference of the Parties, Rule 7.2.
[16] The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Art XI, paragraph 7.
[17] Convention on the Conservation of Migratory Species of Wild Animals (CMS), Rules of Procedure for the Meetings of the Conference of the Parties, Rule 2.2.
[18] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), Rules of Procedure of the Meeting of the Parties, Rule 6.2.
[19] The International Commission for the Conservation of Atlantic Tunas (ICCAT), Guidelines and Criteria for Granting Observer Status at ICCAT Meetings, paragraph 4.
[20] The Commission for the Conservation of Southern Bluefin Tuna (CCSBT), Rules of Procedure of the Commission, Rule 3.3.
[21] The Northwest Atlantic Fisheries Organization (NAFO), Rules of Procedure for the Commission, Rule 4.
[22] The South East Atlantic Fisheries Organization (SEAFO), Rules of Procedure of the Commission, paragraph 38(k).
[23] The General Fisheries Commission for the Mediterranean (GFCM), Rules of Procedures of the Commission, Rule VI.1.
[24] The International Council for the Exploration of the Sea (ICES), Policy on Observer Status, paragraph 9.
[25] The Indian Ocean Tuna Commission (IOTC), Rules of Procedure of the Commission, Rule VI.1.

5. Recommendations

Given the strong emphasis on transparency and inclusivity throughout the text of the BBNJ Agreement, which is reinforced by the precedent set during the IGCs and consistent with best practices in other global and regional forums, the High Seas Alliance offers the following recommendations for Parties as they develop provisions on observer participation and transparency:

- **Support a default open access approach to all meetings**

Public access to meetings promotes effectiveness, accountability, and the inclusion of additional expertise. Parties should support a default open access approach to meetings of both the CoP and its subsidiary bodies by amending Rule 33 in the revised aid to negotiations by the Co-Chairs on the CoP's Rules of Procedure to include the phrase 'and its subsidiary bodies'.

- **Limit closed meetings to exceptional circumstances**

Any decision to close a meeting should be limited to exceptional circumstances and require approval by a two-thirds majority of the CoP or the relevant subsidiary body. To support this, Parties should consider revising Rule 33 in the revised aid to negotiations by the Co-Chairs on the CoP's Rules of Procedure. Parties could also consider amending Rule 6 or 7 to ensure that observers continue to have access to relevant information, even when meetings of the CoP or its subsidiary bodies are held in closed session.

- **Refrain from unduly restrictive objection procedures for observers**

Given the discussions around introducing an objection mechanism for observer participation, any such provision in the CoP's Rules of Procedure should at a minimum follow the model used by most modern IFBs by requiring support from a simple majority of Parties. A higher standard, such as the two-thirds threshold included as an option in Rule 6 (paragraph 1 bis) of the Co-Chairs revised aid to negotiations, would be more reflective of the historically high standard of transparency incorporated throughout the BBNJ Agreement and in article 48.

- **Establish dedicated provisions for the participation of IP&lc representatives**

Establish a separate participation process for representatives of IP&lcs, based on preliminary consultations with their representatives. This process should be consistent with Indigenous Peoples' position as rights-holders rather than observers and, therefore, distinct from the participation arrangements for other observers, including NGOs.

- **Ensure Rule 7.1 does not restrict observer admissions to presidential invitation**

To prevent unnecessary complexity and ensure the process is not 'unduly restrictive', the High Seas Alliance recommends deleting the bracketed text ('upon the invitation of the President') in Rule 7.1 of the revised aid to negotiations prepared by the Co-Chairs on the draft rules of procedure for the BBNJ CoP.

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High Seas Alliance

The High Seas Alliance is a group of 50+ non-governmental members who work together to inspire, inform and engage the public, decision makers and experts to support and strengthen High Seas governance and conservation.