PREPCOM DEEP DIVES

High Seas Alliance

Implementation and Compliance Committee

Briefing: BBNJ PrepCom
April 2025

Executive Summary

The Agreement under the UN 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) will meet twice in 2025 (14-25 April and 18-29 August), and at least once more in 2026. 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 BBNJ Implementation and Compliance Committee (ICC) and highlights key areas for discussion during PrepCom.

Key takeaways

- The ICC is established under Article 55 to facilitate and consider the implementation of, and promote compliance with, the provisions of the BBNJ Agreement. The ICC will be facilitative in nature and function in a transparent, non-adversarial, and non-punitive manner.
- The ICC will consist of members possessing appropriate qualifications and experience nominated by Parties to the Agreement and elected by its CoP. Due consideration is to be given to gender balance and equitable geographical representation. The number of members of the ICC is not set in the Agreement.
- The ICC will operate under the modalities and rules of procedure adopted by the CoP at its first meeting. It will consider implementation and compliance issues at both individual and systemic levels, report periodically, and make recommendations to the CoP while remaining cognizant of respective national circumstances.
- The CoP will need to determine the number of ICC members, set the duration and staging of members' terms, and develop appropriate modalities and rules of procedure for the ICC.
- The BBNJ CoP could draw upon the models provided by the Paris Agreement Implementation and Compliance Committee (PAICC), the Aarhus Convention Compliance Committee, and the Espoo Convention Implementation Committee when developing the ICC's framework (modalities, terms of reference, and operating modes, etc.).
- The provisional program of work (PPW) for the first meeting of the PrepCom (April 2025) outlines several key issues for consideration, including: the terms of reference and operational modalities for subsidiary bodies established under the Agreement (including the ICC); rules of procedure; selection processes for members; and financial rules for their funding. These foundational decisions will shape how the ICC operates once the Agreement enters into force.

1. Purpose and main functions of the ICC

The ICC is established in Article 55 of the BBNJ Agreement (see the text in the Annex). Its primary functions are twofold:

1. To facilitate and consider the implementation of the provisions of the Agreement;
2. To promote compliance with the Agreement at individual and systemic levels.

Facilitating implementation in this context could be interpreted as enabling the fulfillment of the Agreement's provisions and decisions at the Party (individual) level and the Agreement (systemic) level. The ICC is tasked with considering both aspects and making recommendations to the CoP (Art. 55(3)). The inclusion of both individual and systemic levels implies that the ICC's responsibilities range from addressing specific Parties' non-implementation or non-compliance to reviewing the general operation of the Agreement and recommending improvements.

Measures to facilitate implementation at the systemic level may include developing additional clarification or guidance on elements of the Agreement for the CoP to consider and adopt. This could be an important function of the committee to analyze systemic issues and propose solutions to the CoP, thereby saving the CoP significant time.

The functions of facilitating implementation and promoting compliance apply across all parts of the Agreement – marine genetic resources (MGRs), area-based management tools (ABMTs), environmental impact assessments (EIAs), and capacity building and the transfer of marine technology (CBTMT).

The Agreement provides multiple information sources to inform the ICC's work. It can explicitly draw on appropriate information from any subsidiary bodies under the Agreement as well as relevant external instruments, frameworks, and bodies (IFBs) (Art. 55(4)). While not explicitly mentioned, the ICC would logically also draw on implementation reports periodically submitted by Parties under the different parts of the Agreement (Arts. 16(2), 26(1), 45(3)), and on general implementation reports (Art. 54).

Regarding its approach, the Agreement specifies that the ICC shall be "facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive" (Art. 55(1)).

Additional considerations

While the Agreement only specifies that the ICC reports to the CoP (Art. 55(3)), Parties may wish to consider whether the ICC, when addressing issues of non-implementation or non-compliance at the individual, country level, should also communicate directly with the Party concerned. This could include interim reports or recommendations during intersessional periods and might involve consultation processes with guidelines on structure and the types of assistance the ICC can provide.

Given the ICC's broad mandate to review implementation and make recommendations across the Agreement, it could play a valuable role in analyzing issues and preparing recommendations for subsequent CoP discussions.

2. Relevant items on the PrepCom agenda

Several relevant issues for the ICC are reflected in the PrepCom PPW (A/AC.296/2025/L.2). PrepCom 1 (April 2025) will address:

- Rules of procedure for the CoP (PPW Item I(1)), which could potentially apply mutatis mutandis to subsidiary bodies.
- Additional or separate subsidiary body procedures (PPW Item I(2))
- Selection processes for subsidiary body members (PPW Item I(3))
- Initial discussions on cooperation with external relevant IFBs and reporting (PPW Item I(8)).

Regarding PPW Item I(1) and Item 1(2), Article 47(4) of the BBNJ Agreement requires that the CoP adopts rules of procedure for itself and its subsidiary bodies at its first meeting. Article 55(3) specifies that the ICC shall operate under the modalities and rules of procedure adopted by the CoP at its first meeting. This raises the question of whether the CoP rules of procedure could apply mutatis mutandis to all subsidiary bodies, or whether specific rules of procedure should be developed.

Regarding PPW Item I(3), the PrepCom must consider membership modalities: nomination processes, election procedures, and the size of the Committee. Will there be a cap on numbers? Could each Party appoint a member? Or would some other formula or mechanism for selection be more appropriate?

While BBNJ Article 55(2) provides for members "possessing appropriate qualifications and experience" with "due consideration given to gender balance and equitable geographical representation", it does not clarify whether members will act as State representatives or in an individual capacity, nor does it specify what qualifications and experience would be considered "appropriate".

3. Connection with the COP and other subsidiary bodies

BBNJ Article 55(4) sets out a broad information pool for the ICC, including appropriate information from bodies established under the BBNJ Agreement (internal sources), as well as relevant IFBs (external sources).

Regarding the internal flow of information and the role of the ICC with other subsidiary bodies, Parties should note that, while the ICC's purview explicitly encompasses the entire BBNJ Agreement, several other subsidiary bodies are also mandated to monitor the implementation of specific provisions and to make recommendations for improvement. Parties may wish to provide initial guidance on when a particular implementation or compliance issue should be addressed by a specialized subsidiary body (such as the Access and Benefit-Sharing Committee (ABSC) for Part II or the Capacity Building and Transfer of Marine Technology Committee (CBTMTC) for Part V) versus the ICC to avoid duplication of work while preserving the ICC's broad mandate. When addressing matters that fall within another subsidiary body's expertise, the ICC may wish to request their input. Parties could consider authorizing committee-to-committee requests in the ICC's modalities or rules of procedure, with attention to meeting timing and frequency to prevent unnecessary delays.

Regarding external information sources, Parties should consider whether this involves only passive use of information or also active exchanges with IFBs. If the latter, effective structuring of such interactions becomes critical for the ICC and other subsidiary bodies. Parties may also consider whether the ICC should draw on appropriate information from a broader range of sources, including observers that raise issues of compliance and implementation. This would align with the Agreement's emphasis on transparency throughout the decision-making and implementation (Art. 48) and with the ICC's role (Art. 55(1)) which indicates that the ICC should also be able to draw on information from observers that raise issues of compliance and implementation, as necessary.

4. Considerations for PrepCom 1

4.1 Terms of reference, modalities and rules of procedure

PPW Item I(2)

In its note on the BBNJ's subsidiary bodies[1] (A/AC.296/2025/4), the Division of Oceans and Law of the Sea (DOALOS) offers general considerations on a) rules of procedure, terms of reference and modalities for subsidiary bodies (paragraphs 6-23), b) general aspects with regards to membership (paragraphs 24-31), and c) specific considerations for the ICC (paragraphs 57-63).

[1] "Terms of reference and modalities for the operation of, and rules of procedure for, the subsidiary bodies established under the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, including the selection process for their members: Note by the Secretariat". At https://www.un.org/bbnjagreement/sites/default/files/2025-02/20250205BBNJPrepCommSubBodsAdvancedUnedited.pdf.

One question raised by the Secretariat is whether the CoP's rules of procedure will apply *mutatis mutandis* to some or all of its subsidiary bodies, or whether specific rules will be adopted for each (paragraph 7). Draft rules of procedure for the BBNJ CoP are contained in the Annex to the Co-Chairs to aid discussions (A/AC.296/2025/3). If Parties choose this pathway, draft Rule 26 would allow for subsidiary body-specific considerations to be reflected in the CoP's rules of procedure.

Whichever pathway is chosen, it is important that the ICC's rules of procedure maintain the CoP's decision-making modalities. A review of practice in different ICCs (Bouvet et al., 2022)[2] found that consensus decision-making can impede progress if a small number of Parties can block an overwhelming majority. Therefore, allowing some form of majority voting when efforts to reach a consensus have been exhausted would be advisable.

Modalities for ICC operations:

The ICC's operational modalities are critical to its effectiveness, so they should clearly define how it will fulfill its mandate in accordance with Article 55 of the Agreement. As noted by the Secretariat[3], existing practices for rules of procedure, terms of reference, and modalities vary and there can be significant overlap in the content of such documents. It also highlights that ICCs tend to include specific features in their terms of reference and modalities, including:

- Processes for facilitation of implementation
- Measures to promote compliance
- Mechanisms for initiating compliance procedures
- Protocols for receiving and addressing submissions[4]

In developing modalities for the ICC, Parties should be guided by the explicit approach set out in the Agreement that the ICC be "facilitative in nature and function in a manner that is transparent, non-adversarial, and non-punitive". The ICC should have an open-ended mandate to make recommendations to the CoP according to the needs arising, including recommending the development of specific procedures for addressing compliance cases. This aligns with findings[5] that ICCs are most effective when taking collaborative, transparent, and non-confrontational approaches that encourage Parties to seek assistance in implementing treaty obligations. Parties may also wish to develop specific processes for the ICC to follow up on implementation reports submitted under Article 54.

A key question for the modalities is how implementation and compliance processes can be initiated and by whom ("triggers"). Potential triggers could include:

- Self-trigger by Parties
- Trigger by the CoP
- Trigger by other Parties
- Trigger by the ICC itself
- Information from civil society/observers

The last option aligns with the Agreement's strong commitment to transparency, particularly in Article 48, supporting the provision that observers should be able to raise compliance and implementation issues, similar to the approach used by the Aarhus Convention Compliance Committee.[6]

While PAICC developed its own rules of procedure, the BBNJ Agreement specifies that the ICC shall operate under the modalities and rules of procedure adopted by the CoP at its first meeting' (Art. 55(3)). This suggests that CoP1 will set the rules of procedure and modalities.

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[2] Bouvet, M., Wright, G., Kachelriess, D., Cremers, K., Rochette, J. "Ensuring Effective Implementation of a High Seas Biodiversity Treaty: Lessons Learned and Options for an Implementation and Compliance Committee", STRONG High Seas Project, 2022.

[3] Secretariat note, paragraph 10.

[4] Secretariat note, paragraphs 19 and 20.

[5] Ibid.

[6] Aarhus Decision I/7, para. 18.

Experience from other bodies:

In developing modalities, the PrepCom can draw on the Paris Agreement, the Aarhus Convention, and the Espoo Convention.[7]

Article 15[8] of the Paris Agreement resembles Article 55 of the BBNJ Agreement, and its terms of reference and modalities[9] may inform the BBNJ ICC's development, as may the rules of procedure of the Paris Article 15 Committee.[10]

Both the PAICC and the Aarhus Convention's Compliance Committee list potential methods in their modality's decisions. PAICC's methods include dialogue with concerned Parties, assistance, recommendations, action plan development, and actual findings - similar to those available under the Aarhus Agreement.[11]

However, unlike the Aarhus Convention Compliance Committee, the PAICC lacks civil society, third-party, and party-to-party triggers. Issues come before the PAICC through Party submissions,[12] the PAICC itself (when a mandatory requirement is not met),[13] or the PAICC with the consent of the Party.[14]

The PAICC provides insight into the term "systemic issues" (referenced in BBNJ Article 55(3)): the Committee can upon the request of the CMA (the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement), or of the Committee itself, investigate a systemic issue where several Parties are facing issues.[15]

BBNJ Article 55 also reflects the Aarhus Convention's Compliance Committee approach.[16] Unlike the PAICC, the Aarhus Committee accepts submissions from the public.[17] Like the PAICC, its measures are non-confrontational, non-judicial, and consultative.[18] Measures that may be taken include a) the provision of advice, assistance, and recommendations to a Party, b) requests to the Party to submit a compliance strategy, c) declarations of non-compliance, and d) the issuance of cautions.[19]

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[7] Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). At https://unece.org/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf.

[8] Paris Agreement Article 15.

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

[9] Paris Agreement Decision 20/CMA.1, Annex, para 4. Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement. At https://unfccc.int/decisions?f%5B0%5D=session%3A4221&search2=

[10] Decision 24/CMA.4 (2022) Rules of Procedure for the Art. 15 Committee. At https://unfccc.int/sites/default/files/resource/cma4_auv_16_PAICC.pdf

[11] See Aarhus.

[12] Decision 20/CMA/1, Annex, para. 20.

[13] Decision 20/CMA/1, Annex, para. 22(a). There is a specific list of mandatory issues, such as the failure to communicate or maintain a nationally determined contribution, or to submit a mandatory report or communication of information.

[14] Decision 20/CMA/1, Annex, para. 22(b).

[15] Decision 20/CMA/1, Annex, paras 32-34.

[16] Para 13 of the annex to decision I/7. ECE/MP.PP/2/Add.8 2 April 2004. https://unece.org/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf
See Guide to the Aarhus Convention Compliance Committee (v2) at https://unece.org/DAM/env/pp/Publications/Guide_to_the_Compliance_Committee__second_edition__2019_/English/Guide_to_the_Aarhus_Convention_Compliance_Committee__2019.pdf

[17] Aarhus Decision I/7, para. 18.

[18] Aarhus Decision I/7, para. 37.

[19] Aarhus Decision I/7, para. 37 (h).

The experiences of these comparable bodies offer several key insights for the BBNJ ICC:

1. **Balance flexibility and structure:** The ICC should have clear procedures while maintaining flexibility to address diverse implementation challenges.
2. **Multiple triggering mechanisms:** More avenues to raise compliance issues increase effectiveness in identifying and addressing implementation challenges.
3. **Transparent operations:** Public meetings and accessible information, as practised by the Aarhus Convention Compliance Committee, would support the Agreement's transparency objectives.
4. **Progressive measures:** A graduated approach to compliance facilitation - from dialogue and assistance to more formal recommendations - provides appropriate tools for different circumstances.

4.2 Composition and selection of members and term

PPW Item I(3) (Selection)

The requirement for "[M]embers possessing appropriate qualifications and experience nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographical representation" (Art. 55(2)) leaves several questions open for discussion.

A fundamental issue is the capacity in which ICC members will serve. The Secretariat notes state that practice varies among multilateral instruments - some ICCs comprise State representatives, while others include members serving in individual or personal capacities (Secretariat note, paragraph 59). If Parties intend the ICC to analyze implementation items on the CoP's agenda extensively, representation in State capacity and a larger membership may be more important than if the ICC's scope is narrower.

Experience from other bodies:

The PAICC consists of 12 members with "recognized competence in relevant scientific, technical, socioeconomic or legal fields," elected based on equitable geographical representation: two members from each of the five UN regional groups and one member each from small island developing States (SIDS) and least developed countries (LDCs), with attention to gender balance. Members serve in individual capacities.[20]

PAICC also elects alternates. Both members and alternate members serve three-year terms, with a maximum of two consecutive terms. Terms are staggered (e.g., six members are initially elected for two years and six for three years, with subsequent elections for three-year terms).

The Implementation Committee[21] of the Espoo Convention offers another model. The Committee comprises eight members nominated by Parties that are, in turn, elected by the Meeting of the Parties.[22]

[20] See https://unfccc.int/news/key-paris-agreement-implementation-and-compliance-work-initiated.

[21] The Implementation Committee was established by the Meeting of the Parties in February 2001 (decision II/4 of the second Meeting of the Parties, revised as decision III/2, which provides the structure and functions of the Implementation Committee and procedures for review of compliance.

[22] Implementation Committee's structure and functions and operating rules, at https://unece.org/sites/default/files/2023-04/Implementation%20Committee%20structure%20functions%20procedures%20rules.e%202020%20%281%29.pdf. See also its operating rules, Annex to decision IV/2 of the Meeting of the Parties, at https://unece.org/DAM/env/documents/2008/eia/decision.IV.2.e.pdf and Opinions to 2020, at https://unece.org/sites/default/files/2021-02/Implementation%20Committee%20opinions%20to%202020_MOP-8_2020.pdf.

5. Recommendations

Based on the analysis of comparable bodies and the mandate established in Article 55 of the BBNJ Agreement, we recommend that PrepCom considers the following elements when developing the ICC's framework:

1. **Structure and Functioning:** Draw upon successful aspects of the Paris Agreement PAICC, Aarhus Convention Compliance Committee, and Espoo Convention Implementation Committee, adapting these to the unique needs of the BBNJ Agreement.
2. **Transparency and Participation**: Establish mechanisms allowing public and civil society submissions to the ICC, consistent with the BBNJ Agreement's strong transparency provisions, including Article 48. Ensure that ICC meetings are public to maximize transparency. This will provide opportunities for meaningful participation, including in review mechanisms, for all interested Parties (State, Indigenous Peoples, and local communities, and non-State).
3. **Processes:** Design procedures enabling efficient, flexible, and timely functioning while maintaining scientific rigor and adherence to the precautionary principle.
4. **Scientific Foundations:** Ensure ICC recommendations are based on the best available science and knowledge, including advice from the STB.
5. **Implementation Efficacy:** Develop modalities that allow the ICC to fulfill its role to facilitate implementation and promote compliance, including by ensuring that questions on obligations under the agreement and decisions by the CoP are clarified as necessary through its recommendations. Monitoring and enforcement responsibilities should be clear and effective, including effective cooperation and consultation with IFBs.
6. **Equity Considerations:** Establish processes ensuring equitable implementation of the Agreement, with particular attention to capacity building and technology transfer needs.
7. **Triggering Mechanisms:** Create multiple pathways for raising implementation and compliance issues, including self-reporting by Parties, CoP referrals, submissions from other Parties, ICC-initiated reviews, and civil society information.

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Annex Text

Article 55

Implementation and Compliance Committee

1. An Implementation and Compliance Committee to facilitate and consider the implementation of and promote compliance with the provisions of this Agreement is hereby established. The Implementation and Compliance Committee shall be facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.

2. The Implementation and Compliance Committee shall consist of members possessing appropriate qualifications and experience nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographical representation.

3. The Implementation and Compliance Committee shall operate under the modalities and rules of procedure adopted by the Conference of the Parties at its first meeting. The Implementation and Compliance Committee shall consider issues of implementation and compliance at the individual and systemic levels, inter alia, and report periodically and make recommendations, as appropriate while cognizant of respective national circumstances, to the Conference of the Parties.

4. In the course of its work, the Implementation and Compliance Committee may draw on appropriate information from bodies established under this Agreement, as well as relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as may be required.

Article 47

Conference of the Parties

4. The Conference of the Parties shall by consensus adopt, at its first meeting, rules of procedure for itself and its subsidiary bodies, financial rules governing its funding and the funding of the secretariat and any subsidiary bodies and, thereafter, rules of procedure and financial rules for any further subsidiary body that it may establish. Until such time as the rules of procedure have been adopted, the rules of procedure of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction shall apply.

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.