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Preparatory Commission for the Entry into Force of 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 and the Convening of the First Meeting of the Conference of the Parties to the Agreement

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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

I. Introduction

1. 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 (“the Agreement”) provides for the establishment of subsidiary bodies. These bodies include the Access and Benefit-Sharing Committee established pursuant to article 15, paragraph 1, the Capacity-Building and Transfer of Marine Technology Committee established pursuant to article 46, paragraph 1, the Scientific and Technical Body established pursuant to article 49, paragraph 1, and the Implementation and Compliance Committee established pursuant to article 55, paragraph 1. The Conference of the Parties to the Agreement shall also establish a Finance Committee on financial resources, in accordance with article 52, paragraph 14.
2. The Agreement further requires the Conference of the Parties to determine “terms of reference and modalities for the operation” of the Access and Benefit-



Sharing Committee¹ and of the Scientific and Technical Body,² and to decide on the same for the Capacity-Building and Transfer of Marine Technology Committee³ and for the Finance Committee on financial resources.⁴ The Agreement also provides, in article 47, paragraph 4, that the Conference of the Parties shall by consensus adopt, at its first meeting, rules of procedure for itself and its subsidiary bodies, and, thereafter, rules of procedure for any further subsidiary body that it may establish. In article 55, paragraph 3, the Agreement provides that 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.

3. By its resolution [78/272](#), the General Assembly decided to establish a preparatory commission to prepare for the entry into force of the Agreement and to prepare for the convening of the first meeting of the Conference of the Parties to the Agreement (“Preparatory Commission”). Pursuant to article 47, paragraph 2, of the Agreement, the first meeting of the Conference of the Parties is to take place no later than one year after the entry into force of the Agreement. As mandated in resolution [78/272](#), the Commission held a three-day organizational meeting, from 24 to 26 June 2024. At that meeting, the Commission decided, among other things, to request the Co-Chairs, in consultation with the Bureau, to prepare a provisional programme of work for the Commission on the basis of the clusters of issues discussed during the organizational meeting, which include matters to be addressed by the Conference of the Parties at its first meeting, as expressly set out in the Agreement, and additional matters identified during the organizational meeting that may be addressed at an early stage by the Conference of the Parties.⁵ The Commission also decided that the Co-Chairs should ensure that matters to be addressed by the Conference of the Parties at its first meeting, as expressly set out in the Agreement, would be given priority in the work of the Commission. The cluster entitled “Governance issues” includes the terms of reference and modalities for the operation of, and rules of procedure for, the following subsidiary bodies established under the Agreement:

- (a) Access and Benefit-Sharing Committee;
- (b) Capacity-Building and Transfer of Marine Technology Committee;⁶
- (c) Finance Committee;
- (d) Implementation and Compliance Committee;⁷
- (e) Scientific and Technical Body.⁸

The “Governance issues” cluster also includes the selection process for the members of the Scientific and Technical Body⁹ and the other subsidiary bodies established under the Agreement listed above.

4. To assist the Preparatory Commission in considering the matter, the Secretariat has prepared the present note, which provides an overview of general considerations related to the terms of reference and modalities for the operation of, and rules of

¹ Art. 15 (2).

² Art. 49 (2).

³ Art. 46 (2).

⁴ Art. 52 (14).

⁵ [A/AC.296/2024/4](#), annex.

⁶ It is expressly set out in article 46, paragraph 2, of the Agreement that this is to be addressed at the first meeting of the Conference of the Parties.

⁷ It is expressly set out in article 55, paragraph 3, of the Agreement that this is to be addressed at the first meeting of the Conference of the Parties.

⁸ It is expressly set out in article 49, paragraph 2, of the Agreement that this is to be addressed at the first meeting of the Conference of the Parties.

⁹ Ibid.

procedure for, the subsidiary bodies established under the Agreement, including practice under relevant multilateral instruments. It also provides an overview of general features identified under other multilateral instruments that may be relevant in developing such documents, as well as some features specific to the various types of bodies (see sect. II). The note then addresses the selection process for members of each of the subsidiary bodies (see sect. III). The note concludes with a set of possible actions that the Commission could take with a view to assisting the Conference of the Parties in considering and making decisions on these matters (see sect. IV). In the note, the bodies are addressed in the order in which they appear in the cluster of issues reflected in the annex to the statement by the Co-Chair of the Commission at the closing of the organizational meeting ([A/AC.296/2024/4](#)).

5. The note was informed by a wide variety of practice that could be relevant, including examples that concern bodies that may not be directly comparable to the subsidiary bodies established under the Agreement, but which may nevertheless provide additional reference points for consideration. Where possible, examples are drawn from the most directly comparable bodies at the global level, in terms of establishment modality, status and mandate. Examples are also included where similar functions are carried out by ad hoc expert or working groups, subsidiary bodies created by the governing body of the relevant instrument, or committees of the whole, rather than standing subsidiary bodies established through the relevant treaty.¹⁰

II. Rules of procedure, and terms of reference and modalities

A. Overview

6. The Preparatory Commission may consider various aspects to facilitate the work of the Conference of the Parties at its first meeting in respect of the documents to be adopted for its subsidiary bodies and the content thereof. For each subsidiary body established under the Agreement, the Conference of the Parties must, pursuant to the Agreement, establish terms of reference and modalities for operation and/or rules of procedure, depending on the body. The Commission may consider, as a first step, whether to recommend to the Conference of the Parties the inclusion of the necessary

¹⁰ The terms of reference and modalities for the operation of, and rules of procedures for, similar bodies under the following treaties and institutions were reviewed: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; the Convention on Biological Diversity; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention on the Conservation of Migratory Species of Wild Animals; the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention); the Convention on Long-range Transboundary Air Pollution; the Convention on the Protection and Use of Transboundary Watercourses and International Lakes; the International Seabed Authority; the International Treaty on Plant Genetic Resources for Food and Agriculture; the International Whaling Commission; the Kyoto Protocol to the United Nations Framework Convention on Climate Change; the Minamata Convention on Mercury; the Montreal Protocol on Substances that Deplete the Ozone Layer; the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 (London Protocol); the Paris Agreement under the United Nations Framework Convention on Climate Change; the Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits; the Convention on Wetlands of International Importance especially as Waterfowl Habitat ("Ramsar Convention"); the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; the Stockholm Convention on Persistent Organic Pollutants; the United Nations Framework Convention on Climate Change; and the United Nations Convention on the Law of the Sea.

provisions concerning the subsidiary bodies in the rules of procedure of the Conference of the Parties itself or, rather, the adoption of separate rules of procedure. It may also consider whether to recommend the adoption of separate “terms of reference” and “modalities” or the adoption of “terms of reference and modalities” as consolidated documents for each of the relevant subsidiary bodies, and whether to recommend the elements that may be contained in those documents, so as to ensure, as needed, consistency among the bodies and avoid duplication. In the following sections, some possible considerations are highlighted in this regard, informed by practice under other instruments. Given the overarching role of the rules of procedure, these are considered first.

Rules of procedure

7. Practice with regard to the provisions in the rules of procedure of subsidiary bodies under similar multilateral instruments is not uniform. While there is a general tendency towards the inclusion of the necessary provisions concerning the subsidiary bodies in the rules of procedure of the governing body,¹¹ some subsidiary bodies have separate rules of procedure. The adoption of separate rules of procedure for a subsidiary body may be based on a requirement in its constitutive instrument,¹² although this is not always the case.¹³ In addition, where there are separate rules of procedure for a subsidiary body, they may integrate, *mutatis mutandis*, elements of the rules of procedure of its governing body, such as rules on voting or the conduct of elections. No multilateral instrument was identified that provides for the adoption of separate rules of procedure for each of its subsidiary bodies.

8. The approach of adopting rules of procedure for certain subsidiary bodies only¹⁴ may provide flexibility, for example by allowing the Conference of the Parties to decide at any time that separate rules of procedure would be more appropriate for a particular body established under the Agreement.

9. In developing the rules of procedure for the Conference of the Parties and its subsidiary bodies, the Preparatory Commission may consider whether the rules of procedure of the Conference of the Parties will also apply *mutatis mutandis* to the proceedings of any subsidiary bodies, noting the current approach taken in the aid to discussions and negotiations on the rules of procedure for the Conference of the

¹¹ See, for example, UNEP/CBD/COP/DEC/I/1, annex, rule 26, para. 5; UNEP/MC/COP.1/Dec.1, annex, rule 26; [UNEP/FAO/RC/COP.1/33](#), annex I, decision RC-1/1, annex, rule 26; and Ramsar Convention, rules of procedure of the Conference of the Contracting Parties, rule 25, para. 5.

¹² See, for example, Convention on Migratory Species, art. VIII (4), and its rules of procedure for the Scientific Council and its Sessional Committee; Minamata Convention on Mercury, art. 15 (5), and its rules of procedure for Implementation and Compliance Committee; and Paris Agreement, art. 15 (3), and its rules of procedure of the committee to facilitate implementation and promote compliance referred to in art. 15 (2), of the Paris Agreement.

¹³ See, for example, Convention on International Trade in Endangered Species of Wild Fauna and Flora, rules of procedure of the Animals Committee (document AC33 Doc. 2, annex), and rules of procedure of the Plants Committee (document PC19 Doc. 3, annex); and IWC/67/FA/20, annex I.

¹⁴ For example, the rules of procedure of the Council of the International Seabed Authority state that the rules of procedure of the Council apply, *mutatis mutandis*, to the proceedings of subsidiary organs unless the Council decides otherwise. Although there is no requirement in the governing instruments, separate rules of procedure were adopted for the Legal and Technical Commission, an organ of the Council. See [ISBA/C/12](#), rule 73; and [ISBA/6/C/9](#), annex.

Parties prepared by the Co-Chairs,¹⁵ or whether separate rules of procedure should be adopted for all or some subsidiary bodies.¹⁶

Terms of reference and modalities for operation

10. The Agreement requires the Conference of the Parties to determine or decide on the terms of reference and modalities for the operation of the various subsidiary bodies, as outlined above. Terms of reference and modalities often lay out the nature, scope of work, functions and operational modalities for such bodies. In practice, there can be significant overlap between the content of terms of reference documents and modalities documents. Such documents may be adopted separately or as one document, and various terminology is used for such documents and the elements contained therein. In addition, these documents may also contain rules of procedure, for example as a subsection, or procedural rules that overlap with the types of rules found in the rules of procedure.

11. Terms of reference are often used to establish a functional operational framework for a subsidiary body and generally address the nature, scope of work and functions of the body. Some are broader and include elements such as composition and membership, including elections and selection of officers, meeting arrangements and decision-making procedures.

12. Modalities documents have been used in multilateral instruments to operationalize the work of subsidiary bodies and outline the specific procedures and operational rules that guide the implementation of their mandates. As noted, there can be overlap between modalities and terms of reference and rules of procedure.

B. Rules of procedure for subsidiary bodies

13. Where separate rules of procedure have been adopted for subsidiary bodies under other multilateral instruments that may be considered similar to the Agreement, various elements have been included, such as the following: purpose and scope; definitions or use of terms; representation and attendance; meetings; elections of officers or the bureau; documents; secretariat; participation by non-members; agenda; conduct of business and decision-making; subcommittees and/or working groups; languages; records; reports and communications; financial arrangements; travel; amendments to the rules of procedure; overriding authority of the governing instrument; other functions; and final provisions.

14. With regard to specific types of subsidiary bodies, the rules of procedure for implementation and/or compliance committees may contain some distinct features, due to the particular functions of these bodies. For example, they may develop procedures for submissions on issues of implementation and/or compliance¹⁷ and procedures for committee initiatives.¹⁸ They may also contain other features, such as provisions concerning expert advice to, and information-gathering by, the committee.¹⁹

¹⁵ [A/AC.296/2025/3](#).

¹⁶ Article 55, para. 3, of the Agreement provides that 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. Attention is drawn in that regard to the Minamata Convention on Mercury, in the context of which the rules of procedure of the Conference of the Parties apply mutatis mutandis to other subsidiary bodies, while separate rules of procedure were approved by the Conference of the Parties for its Implementation and Compliance Committee, as required in article 15, para. 5, of the Convention. See UNEP/MC/COP.1/Dec.1, annex, rule 26; and UNEP/MC/COP.2/Dec.4.

¹⁷ ECE/MP.EIA/10, decision IV/2, annex IV, rules 11–14.

¹⁸ Ibid., rule 15.

¹⁹ See, for example, [FCCC/PA/CMA/2022/10/Add.3](#), decision 24/CMA.4, annex, rule 10.

15. With regard to practice in respect of finance committees, a rule on incompatible activities and confidentiality may be included.²⁰

16. Rules of procedure of subsidiary bodies similar to the Scientific and Technical Body may include rules with respect to conflicts of interest of members during and after their time serving as a member of the body,²¹ including declarations of interest.²² Rules on confidentiality with respect to data or the work of the body have also been included in some rules of procedure.²³

17. No separate rules of procedure for bodies with mandates related to those of the Access and Benefit-Sharing Committee or the Capacity-Building and Transfer of Marine Technology Committee were identified.

C. Terms of reference and modalities for operation

18. Where terms of reference have been adopted for subsidiary bodies under multilateral instruments that may be considered similar to the Agreement, various elements have been included, such as the following: background; preamble; purpose or scope and objective; mandate; membership and/or composition; modus operandi or modalities; functions; operational or meeting procedures; financial support; functions of the secretariat; other participants; officers of the committee; administrative and procedural matters; workplans; meetings; language of meetings; recommendations and reports to the Conference of the Parties; and budget.

19. In terms of reference for bodies with related mandates, no features specific to the types of subsidiary bodies established under the Agreement were identified, with the exception of the Implementation and Compliance Committee. In this instance, some specific features were identified, which significantly overlap with the modalities outlined below. These include procedures for specific submissions and facilitation procedures.²⁴

20. Where separate modalities have been adopted for subsidiary bodies under multilateral instruments that may be considered similar to the Agreement, practice is varied. They may contain elements such as the following: purpose, principles and nature; functions and scope; institutional arrangements; procedural matters; membership; elections; dates and notice of meetings; election of officers; functions of officers; conduct of business and decision-making; languages; documentation; meetings; sources of information; observers; recommendations; alternate and/or replacement members; term limits; and secretariat.

21. For modalities specific to implementation and/or compliance committees, some specific procedural features, linked to the functions of such bodies, include the following: facilitation procedure;²⁵ measures to promote compliance and address

²⁰ [ISBA/5/FC/1](#), rule 10.

²¹ See, for example, [UNEP/POPS/COP.1/31](#), decision SC-1/8, annex.

²² See, for example, Convention on International Trade in Endangered Species of Wild Fauna and Flora, AC33 Doc. 2, annex, rule 12; [UNEP/FAO/RC/COP.1/33](#), decision RC-1/7, annex, para. 7 (a), (b) and (c); and [ISBA/6/C/9](#), annex, rule 11, para. 2.

²³ [ISBA/6/C/9](#), annex, rule 12; and [UNEP/POPS/COP.1/31](#), decision SC-1/7, annex, para. 19.

²⁴ [UNEP/CHW.6/40](#), [UNEP/CHW.6/40/Corr.1](#), [UNEP/CHW.6/40/Corr.2](#), [UNEP/CHW.6/40/Corr.3](#) and [UNEP/CHW.6/40/Corr.4](#), decision VI/12, appendix, para. 19.

²⁵ [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, sect. C.2; and [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, part VII, para. 19.

cases of non-compliance;²⁶ confidentiality of information received in confidence;²⁷ initiation of and process or procedures for submissions;²⁸ measures and outputs;²⁹ possible action by the Conference of the Parties;³⁰ consideration of general or systemic issues;³¹ relationship with the governing body;³² procedures for committee initiatives;³³ information and consultation;³⁴ publication of documents and information;³⁵ other subsidiary bodies;³⁶ information-sharing with compliance committees under relevant multilateral instruments;³⁷ and relationship with the settlement of disputes under the governing instrument.³⁸

22. For modalities specific to scientific and technical bodies, specific features include the following: scientific and technical assessments;³⁹ ad hoc technical expert group meetings;⁴⁰ contribution or participation of non-governmental organizations;⁴¹ cooperation with other relevant bodies or initiatives;⁴² and conflict of interest.⁴³ There is also significant overlap with features found in the terms of reference and rules of procedure for such bodies.

23. Few modalities documents for bodies comparable to the Access and Benefit-Sharing Committee, the Capacity-Building and Transfer of Marine Technology Committee and the Finance Committee on financial resources under the Agreement have been adopted. Where such documents were available, no specific features were identified therein.

III. Membership of subsidiary bodies

A. General aspects

24. The general aspects for consideration with regard to membership of subsidiary bodies under instruments that may be considered similar to the Agreement include the following: eligibility and selection criteria; number of members; selection process;

²⁶ UNEP/CBD/NP/COP-MOP/DEC/1/4, annex, sect. F; [UNEP/CBD/BS/COP-MOP/1/15](#), decision BS-I/7, annex, part VI; Convention on International Trade in Endangered Species of Wild Fauna and Flora, resolution Conf. 14.3, annex, sect. C; and International Treaty on Plant Genetic Resources for Food and Agriculture, resolution 2/2011, annex, part VII.

²⁷ [FCCC/PA/CMA/2018/3/Add.2](#), decision 20/CMA.1, annex, para. 14.

²⁸ Ibid., part III; [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, sect. C; International Treaty on Plant Genetic Resources for Food and Agriculture, resolution 2/2011, annex, part VI; UNEP/CBD/NP/COP-MOP/DEC/1/4, annex, sect. D; and [UNEP/CBD/BS/COP-MOP/1/15](#), decision BS-I/7, annex, part IV.

²⁹ [FCCC/PA/CMA/2018/3/Add.2](#), decision 20/CMA.1, annex, part IV.

³⁰ [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, para. 26.

³¹ [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 25.

³² [FCCC/PA/CMA/2018/3/Add.2](#), decision 20/CMA.1, annex, para. 36.

³³ ECE/MP.EIA/10, decision IV/2, annex IV, rule 15.

³⁴ UNEP/CBD/NP/COP-MOP/DEC/1/4, annex, sect. E; and [UNEP/CBD/BS/COP-MOP/1/15](#), decision BS-I/7, annex, part V.

³⁵ ECE/MP.EIA/10, decision IV/2, annex IV, rule 16.

³⁶ [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, para. 33; and [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 27.

³⁷ [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, para. 34; and [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 28.

³⁸ [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, para. 36; and [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 30.

³⁹ UNEP/CBD/COP/DEC/VIII/10, annex III, sect. G.

⁴⁰ Ibid., sect. H.

⁴¹ Ibid., sect. I.

⁴² Ibid., sect. J.

⁴³ IWC/67/FA/20, para. 3.3.

and term of office and renewal. The Agreement provides for some of these features for its subsidiary bodies, with further elaboration by the Conference of the Parties required for others, as set out below.

Eligibility and selection criteria

25. In reference to eligibility and selection criteria, the Agreement refers to “appropriate” or “suitable” qualifications of the members in various articles, without further elaboration. In practice, further elaboration of the appropriate or suitable qualifications for such bodies is often provided in the terms of reference or rules of procedure for the relevant bodies.

26. With regard to the capacity in which members will serve in the subsidiary bodies established under the Agreement, the Agreement provides that members of the Scientific and Technical Body will serve in their expert capacity, but does not elaborate on this aspect concerning members of other subsidiary bodies, as detailed below.

Number of members

27. No mention is made in the Agreement of the number of members of the various subsidiary bodies, other than the Access and Benefit-Sharing Committee, which shall be composed of 15 members.

Selection process

28. Concerning the selection process for members of the subsidiary bodies, except the Finance Committee on financial resources, the Agreement provides that the members are to be nominated by the Parties and elected by the Conference of the Parties. The Agreement does not specify the modalities for the selection process for the Finance Committee on financial resources. In practice, nomination and election processes are generally associated with subsidiary bodies of limited membership, rather than committees or bodies of the whole.

29. The Agreement refers to taking into account “equitable geographical representation” in reference to the Implementation and Compliance Committee and the Scientific and Technical Body, whereas the phrase “equitable geographical distribution” is used in reference to the selection processes for the Access and Benefit-Sharing Committee, the Capacity-Building and Transfer of Marine Technology Committee and the Finance Committee on financial resources. The requirements concerning “equitable geographical representation” and “equitable geographical distribution” are sometimes supplemented by specific arrangements regarding the selection processes, including distribution of seats among regional groups. Such requirements are generally effected through nomination by regional groups and election by the Conference of the Parties, as can be seen in the practice concerning subsidiary bodies under other multilateral instruments, as set out below. This may be further considered by the Conference of the Parties.

30. Gender balance is also to be taken into account or given due consideration in the selection process for each of the bodies established under the Agreement.⁴⁴ This

⁴⁴ Arts. 15 (2), 46 (2), 49 (2), 52 (14) and 55 (2).

could occur at the nomination or election stage, or both, and the Conference of the Parties may consider specifying the stage at which it must take place.⁴⁵

Term of office

31. The term of office and possibility of renewal for members of the subsidiary bodies is not specified in the Agreement. The Agreement specifies that terms of members' mandates shall be determined by the Conference of the Parties for the Scientific and Technical Body. It does not elaborate on similar determinations for other subsidiary bodies. Practice is not uniform with regard to similar bodies under other instruments, as shown below. The frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

B. Access and Benefit-Sharing Committee

Eligibility and selection criteria

32. The Agreement provides, in article 15, paragraph 2, that the Access and Benefit-Sharing Committee shall be composed of members possessing appropriate qualifications in related fields, so as to ensure the effective exercise of the functions of the Committee. The Conference of the Parties may specify what may constitute "appropriate qualifications in related fields", as well as the capacity in which members of the Committee shall serve. For bodies with related mandates under other instruments, further elaboration has been provided in the relevant terms of reference. For example, the Expert Group on the Terms of the Standard Material Transfer Agreement under the International Treaty on Plant Genetic Resources for Food and Agriculture "shall be composed of experts nominated by Governments, with technical or legal expertise with respect to the exchange of plant genetic resources for food and agriculture and relevant commercial practice",⁴⁶ while the Advisory Group under the Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits is to comprise members "with a skill mix of internationally recognized policy makers, public health experts and technical experts in the field of influenza".⁴⁷

⁴⁵ For example, a decision of the Conference of the Parties to the United Nations Framework Convention on Climate Change invites Parties to give active consideration to the nomination of women for elective posts in any body established under the United Nations Framework Convention on Climate Change and the Kyoto Protocol thereto; this was later extended to the Paris Agreement (FCCC/CP/2001/13/Add.4, decision 36/CP.7, para. 3). The composition and working modalities of the Standing Committee on Finance under the Convention, for example, accordingly contain a reference to taking into account the need to achieve gender balance in accordance with that decision (FCCC/CP/2011/9/Add.1, decision 2/CP.17, annex VI, para. 2).

⁴⁶ See, for example, Food and Agriculture Organization of the United Nations (FAO), document CGRFA/IC/MTA-1/04/3, para. 4.

⁴⁷ Pandemic Influenza Preparedness Framework, para. 7.2.3, and annex 3, para. 3.1.

33. “Appropriate qualifications in related fields”, on the basis of the functions laid out in the Agreement,⁴⁸ may include legal, policy, scientific or technical expertise and/or professional experience in relation to marine genetic resources and digital sequence information on marine genetic resources, such as utilization, including commercialization; best practices; tools and methodologies; data governance; traditional knowledge of Indigenous Peoples and local communities; and multilateral benefit-sharing, including the sharing of both monetary and non-monetary benefits.

Number of members

34. The Agreement provides, in its article 15, paragraph 2, that the Access and Benefit-Sharing Committee shall be composed of 15 members.

Selection process

35. Pursuant to the same article, members of the Access and Benefit-Sharing Committee “shall be nominated by Parties and elected by the Conference of the Parties, taking into account gender balance and equitable geographical distribution and providing for representation on the Committee from developing States, including from the least developed countries, from small island developing States and from landlocked developing countries”.

36. The Agreement does not elaborate on the process for nomination, including with regard to whether there is a role for regional groups in this process. The Conference of the Parties may consider detailing these elements. In bodies with related mandates under other instruments, a set number of members from the respective regional groups is often provided. For example, the Expert Group on the Terms of the Standard Material Transfer Agreement under the International Treaty on Plant Genetic Resources for Food and Agriculture included a set number of members from each regional group of the Food and Agriculture Organization of the United Nations (FAO),⁴⁹ and the Advisory Group under the Pandemic Influenza Preparedness Framework comprises

⁴⁸ The specific functions of the Access and Benefit-Sharing Committee are set out in part II of the Agreement. Under article 15, para. 3, of the Agreement, the Committee may make recommendations to the Conference of the Parties on matters relating to part II of the Agreement, including on the following matters: (a) guidelines or a code of conduct for activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction in accordance with part II; (b) measures to implement decisions taken in accordance with part II; (c) rates or mechanisms for the sharing of monetary benefits in accordance with article 14; (d) matters relating to part II in relation to the Clearing-House Mechanism; (e) matters relating to part II in relation to the financial mechanism established under article 52; and (f) any other matters relating to part II that the Conference of the Parties may request the access and benefit-sharing committee to address. Under article 15, para. 5, the Committee may consult and facilitate the exchange of information with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies on activities under its mandate, including benefit-sharing, the use of digital sequence information on marine genetic resources, best practices, tools and methodologies, data governance and lessons learned. Under article 15, para. 6, the Committee may make recommendations to the Conference of the Parties in relation to information obtained under article 15, para. 5. Under article 16, para. 1, the Committee may make recommendations to the Conference of the Parties on procedures concerning the monitoring and transparency of activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction. Under article 16, para. 3, the Committee shall prepare a report based on the information received through the Clearing-House Mechanism, and make it available to Parties, which may submit comments. The Committee shall submit the report, including comments received, for the consideration of the Conference of the Parties.

⁴⁹ FAO, document CGRFA/IC/MTA-1/04/3, para. 6.

18 members, with 3 drawn from each region of the World Health Organization (WHO).⁵⁰

37. In addition, the Conference of the Parties may consider how to operationalize the reference in article 15, paragraph 2, to “providing for representation on the committee from developing States, including from the least developed countries, from small island developing States and from landlocked developing countries”. There is no relevant practice from bodies with related mandates in this respect, but other subsidiary bodies under multilateral instruments have provided for the inclusion of members from certain categories of States. For example, the terms of reference of the Paris Committee on Capacity-building provide for the Committee to include one member from the least developed countries and one member from the small island developing States, in addition to the members nominated by regional groups.⁵¹

38. The Conference of the Parties may also specify at what stage of the process gender balance is to be taken into account, for example at the nomination or election stage.

Term of office and renewal

39. The term of office and possibility for renewal of terms for members of the Committee is not specified in the Agreement. The Conference of the Parties may consider this aspect, including whether to set a term period, whether to stagger elections, including for the purpose of ensuring continuity, and whether members may be re-elected for additional terms and, if so, any maximum number of terms. For example, the terms of reference for the Advisory Group under the Pandemic Influenza Preparedness Framework provide for three-year terms of office, with members being eligible for two appointments, and the renewal of one third of members every year while maintaining representation from the WHO regions.⁵² As with all subsidiary bodies, the frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

C. Capacity-Building and Transfer of Marine Technology Committee

Eligibility and selection criteria

40. The Agreement specifies, in article 46, paragraph 2, that the Capacity-Building and Transfer of Marine Technology Committee “shall consist of members possessing appropriate qualifications and expertise, to serve objectively in the best interest of the Agreement”. The Conference of the Parties may also specify what qualifications and expertise may be appropriate. Regarding bodies with related mandates under other instruments, one example is provided by the Liaison Group on Capacity-Building for Biosafety under the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, whose members “shall be selected on the basis of their demonstrated expertise and experience with regard to the implementation of the Cartagena Protocol on Biosafety and the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress” thereto.⁵³

41. Appropriate qualifications and expertise for members of the Capacity-Building and Transfer of Marine Technology Committee, on the basis of the functions laid out

⁵⁰ Pandemic Influenza Preparedness Framework, para. 7.2.3, and annex 3, para. 3.1.

⁵¹ [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 2.

⁵² Pandemic Influenza Preparedness Framework, annex 3, para. 3.2.

⁵³ CBD/CP/MOP/DEC/9/7, annex, para. 2.

in the Agreement,⁵⁴ may include legal, policy, scientific or technical expertise and/or professional experience concerning capacity-building and the development and transfer of marine technology in relation to the specific areas covered by the Agreement, namely marine genetic resources, including the fair and equitable sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments.

42. The Conference of the Parties may consider further specifying the capacity in which members shall serve. For example, members of the Paris Committee on Capacity-building serve in their “personal capacity”.⁵⁵ The reference, in the Agreement, to members serving “objectively in the best interest of the Agreement” is not provided for in relation to similar bodies with capacity-building related mandates, but examples can be drawn from documents of implementation and/or compliance committees that use similar language.⁵⁶

Number of members

43. The Agreement does not specify the number of members of the Committee, but practice among bodies with related mandates shows compositions of 10,⁵⁷ 12,⁵⁸ 15⁵⁹ and 22⁶⁰ members. This may be further specified by the Conference of the Parties.

Selection process

44. Article 46, paragraph 2, of the Agreement foresees that members of the Committee shall be nominated by Parties and elected by the Conference of the Parties. The process for nomination and election may be further developed by the Conference of the Parties.

⁵⁴ The functions of the Capacity-Building and Transfer of Marine Technology Committee are provided in part V of the Agreement. Under article 45, paragraph 2, the monitoring and review referred to in article 45, paragraph 1 (“Capacity-building and the transfer of marine technology undertaken in accordance with the provisions of this Part shall be monitored and reviewed periodically”), shall be carried out by the Committee under the authority of the Conference of the Parties and shall be aimed at: (a) assessing and reviewing the needs and priorities of developing States Parties in terms of capacity-building and the transfer of marine technology, paying particular attention to the special requirements of developing States Parties and to the special circumstances of small island developing States and of least developed countries, in accordance with article 42, paragraph 4; (b) reviewing the support required, provided and mobilized, as well as gaps in meeting the assessed needs of developing States Parties in relation to this Agreement; (c) identifying and mobilizing funds under the financial mechanism established under article 52 to develop and implement capacity-building and the transfer of marine technology, including for the conduct of needs assessments; (d) measuring performance on the basis of agreed indicators and reviewing results-based analyses, including on the output, outcomes, progress and effectiveness of capacity-building and transfer of marine technology under this Agreement, as well as successes and challenges; and (e) making recommendations for follow-up activities, including on how capacity-building and the transfer of marine technology could be further enhanced to allow developing States Parties, taking into account the special circumstances of small island developing States and of least developed countries, to strengthen their implementation of the Agreement in order to achieve its objectives. Under article 46, paragraph 3, the Committee shall submit reports and recommendations that the Conference of the Parties shall consider and take action on as appropriate.

⁵⁵ [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 2.

⁵⁶ See, for example, [UNEP/CHW.6/40](#), [UNEP/CHW.6/40/Corr.1](#), [UNEP/CHW.6/40/Corr.2](#), [UNEP/CHW.6/40/Corr.3](#) and [UNEP/CHW.6/40/Corr.4](#), decision VI/12, appendix, para. 5 (“serve objectively and in the best interest of the Convention”).

⁵⁷ [UNEP/MC/SIP.GB.3/7](#), annex II, rule 3, para. 1.

⁵⁸ [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 2.

⁵⁹ [UNEP/CBD/NP/COP-MOP/DEC/1/8](#), annex II, para. 2.

⁶⁰ [FCCC/CP/2011/9/Add.1](#), decision 4/CP.17, annex II, para. 4, as amended by [FCCC/CP/2022/10/Add.2](#), decision 18/CP.27, para. 18.

45. The Agreement requires that equitable geographical distribution be taken into account in the selection process, and the Conference of the Parties may specify how that may be implemented. For example, members of the Governing Board of the Specific International Programme to support Capacity-Building and Technical Assistance under the Minamata Convention on Mercury are nominated through the United Nations regional groups.⁶¹

46. The Agreement also requires provision for representation on the Committee from the least developed countries, small island developing States and landlocked developing countries. The Conference of the Parties may further clarify how this requirement is to be operationalized. For example, the terms of reference of the Paris Committee on Capacity-building provide for that Committee to include one member from the least developed countries and one member from the small island developing States, in addition to the members nominated by regional groups,⁶² and membership of the Technology Executive Committee under the United Nations Framework Convention on Climate Change includes, *inter alia*, one member from a small island developing State and one member from a least developed country Party.⁶³

47. The Conference of the Parties may further develop the requirement to take into account gender balance in the selection process of the Committee, including by specifying at what stage such consideration is to be taken into account, for example at the nomination or election stage. The terms of reference of the Paris Committee on Capacity-building, for example, indicate that “the goal to achieve gender balance” is taken into account at the nomination stage.⁶⁴

Term of office and renewal

48. The Agreement does not specify the term of office for members of the Committee. The Conference of the Parties may consider this aspect, including whether to set term periods and/or criteria for re-election. Practice among similar bodies with related mandates includes terms of two years, with the possibility of re-election. The members of the Paris Committee on Capacity-building and the members of the Governing Board of the Specific International Programme under the Minamata Convention on Mercury serve for two years and are eligible for no more than two consecutive terms in office.⁶⁵ Staggered term limits have also been applied in practice.⁶⁶ As with all subsidiary bodies, the frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

D. Finance Committee on financial resources

Eligibility and selection criteria

49. Article 52, paragraph 14, of the Agreement provides that the Finance Committee on financial resources shall be composed of members possessing appropriate qualifications and expertise, taking into account gender balance and equitable geographical distribution. The Conference of the Parties may specify what qualifications and expertise may be appropriate for this body. For example, members of the Standing Committee on finance under the United Nations Framework

⁶¹ UNEP/MC/SIP.GB.3/7, annex II, rule 3, para. 1.

⁶² [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 2.

⁶³ [FCCC/CP/2011/9/Add.1](#), decision 4/CP.17, annex II, para. 4 (b).

⁶⁴ [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 4.

⁶⁵ *Ibid.*, para. 5; and UNEP/MC/SIP.GB.3/7, annex II, rule 3, para. 3.

⁶⁶ See, for example, [FCCC/CP/2016/10/Add.1](#), decision 2/CP.22, annex, para. 5.

Convention on Climate Change “shall have the necessary experience and skills, notably in the areas of climate change, development and finance”.⁶⁷

50. Appropriate qualifications and expertise, on the basis of the functions laid out in the Agreement,⁶⁸ may include legal, policy, financial, scientific or technical expertise and/or professional experience in relation to the identification and mobilization of funds under multilateral instruments, as well as expertise and/or professional experience relevant for the assessment of the needs of the Parties, in particular developing States Parties; the availability and timely disbursement of funds; the transparency of decision-making and management processes concerning fundraising and allocations; and accountability.

51. The Conference of the Parties may further specify the capacity in which members of the Committee are to serve. For example, the 2007 terms of reference of the Ad Hoc Advisory Committee on the Funding Strategy under the International Treaty on Plant Genetic Resources for Food and Agriculture referred to representatives of Contracting Parties,⁶⁹ but when the Committee was reconvened in 2009 this reference was omitted.⁷⁰

Number of members

52. The Agreement does not provide for the number of members of the Finance Committee on financial resources. This may be further specified by the Conference of the Parties. Practice in this regard is varied. For example, the Finance Committee under the International Seabed Authority is composed of 15 members,⁷¹ the Standing Committee under the United Nations Framework Convention on Climate Change has 20 members,⁷² and the Advisory Committee on Resource Mobilization in the context of the Convention on Biological Diversity is composed of up to 10 dedicated representatives per region, with an additional 10 representatives from other relevant organizations and initiatives and 10 from other stakeholder groups (up to 70 in total).⁷³

Selection process

53. The Agreement does not specify the process for selecting members of the Finance Committee on financial resources. This may be specified by the Conference of the Parties. For example, the members of the Finance Committee under the

⁶⁷ [FCCC/CP/2011/9/Add.1](#), decision 2/CP.17, annex VI, para. 2.

⁶⁸ Details regarding the functions of the Finance Committee on financial resources are provided in part VII of the Agreement. Under article 52, paragraph 14, the Committee shall periodically report and make recommendations on the identification and mobilization of funds under the mechanism. It shall also collect information and report on funding under other mechanisms and instruments contributing directly or indirectly to the achievement of the objectives of the Agreement. In addition to the considerations provided in article 52, paragraph 14, the Committee shall consider, inter alia, (a) the assessment of the needs of the Parties, in particular developing States Parties; (b) the availability and timely disbursement of funds; (c) the transparency of decision-making and management processes concerning fundraising and allocations; and (d) the accountability of the recipient developing States Parties with respect to the agreed use of funds.

⁶⁹ International Treaty on Plant Genetic Resources for Food and Agriculture, document IT/GB-2/07/Report, appendix D.4, para. 1.

⁷⁰ International Treaty on Plant Genetic Resources for Food and Agriculture resolution 3/2009, annex 2, para. 1 (“the Committee will comprise up to two members nominated by each Region”).

⁷¹ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, annex, sect. 9, para. 1.

⁷² See, for example, [FCCC/CP/2011/9/Add.1](#), decision 2/CP.17, annex VI, para. 1.

⁷³ CBD/COP/DEC/15/7, annex II, sect. B, para. 1.

International Seabed Authority are nominated by States Parties and elected by the Assembly.⁷⁴

54. The Agreement requires that equitable geographical distribution be taken into account in the selection process. The Conference of the Parties may specify how this will be implemented. For example, membership in the Standing Committee under the United Nations Framework Convention on Climate Change is divided between Annex I and non-Annex I Parties, but for Parties not included in Annex I, it is further specified that “two members each from the African, Asia-Pacific, and the Latin America and Caribbean States, one member from a small island developing State and one member from a least developed country Party” are to be included.⁷⁵ The Ad Hoc Advisory Committee on the Funding Strategy under the International Treaty on Plant Genetic Resources for Food and Agriculture comprised up to two representatives nominated by each of the FAO regions.⁷⁶

55. The Conference of the Parties may also further specify how gender balance is to be taken into account.

Term of office and renewal

56. The Agreement does not specify the term of office of members of the Committee. The Conference of the Parties may consider this aspect, including whether to set term periods and/or criteria for re-election. For example, members of the Standing Committee under the United Nations Framework Convention on Climate Change “shall serve for a term of two years, with the option of seeking additional terms”,⁷⁷ while members of the Finance Committee under the International Seabed Authority shall hold office for a term of five years, and shall be eligible for re-election for a further term.⁷⁸ As with all subsidiary bodies, the frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

E. Implementation and Compliance Committee

Eligibility and selection criteria

57. Article 55, paragraph 2, of the Agreement provides that 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. The Conference of the Parties may further specify what qualifications and experience are appropriate in the context of this Committee. In the case of bodies with related mandates under other instruments, the members of the Compliance Committee under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, for example, are required to have “recognized competence, including technical, legal or scientific expertise in the fields covered by the Protocol, such as genetic resources and traditional knowledge associated with genetic resources”.⁷⁹

⁷⁴ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, annex, sect. 9, paras. 1 and 2.

⁷⁵ [FCCC/CP/2011/9/Add.1](#), decision 2/CP.17, annex VI, para. 1 (b).

⁷⁶ International Treaty on Plant Genetic Resources for Food and Agriculture, document IT/GB-2/07/Report, appendix D.4, para. 1.

⁷⁷ [FCCC/CP/2011/9/Add.1](#), decision 2/CP.17, annex VI, para. 3.

⁷⁸ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, annex, sect. 9, para. 4.

⁷⁹ UNEP/CBD/NP/COP-MOP/DEC/1/4, annex, sect. B, para. 4.

58. Appropriate qualifications and experience for members of the Implementation and Compliance Committee, on the basis of the functions laid out in the Agreement,⁸⁰ may include legal, policy, scientific or technical expertise and/or professional experience in relation to the consideration of issues of implementation and compliance under multilateral instruments at the individual and systemic levels, in the areas covered by the Agreement, namely marine genetic resources, including the fair and equitable sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments, and capacity-building and the transfer of marine technology.

59. The Agreement does not specify the capacity in which members of the Committee are to serve. This may be specified by the Conference of the Parties. Practice under other multilateral instruments is varied in this regard. The Implementation Committee under the Convention on Long-range Transboundary Air Pollution consists of Parties to the Convention,⁸¹ while members of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and members of the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes serve in their “individual”⁸² and “personal”⁸³ capacities, respectively.

Number of members

60. The Agreement does not specify the number of members of the Implementation and Compliance Committee, which may be specified by the Conference of the Parties. In practice, such bodies generally have around 15 members,⁸⁴ and range from 8⁸⁵ to 20⁸⁶ members.

Selection process

61. Article 55, paragraph 2, of the Agreement provides that members of the Implementation and Compliance Committee are to be nominated by Parties and elected by the Conference of the Parties, with due consideration given to gender balance and equitable geographical representation. Nomination by Parties arranged

⁸⁰ The functions of the Implementation and Compliance Committee are provided for in part VIII of the Agreement. Under article 55, paragraph 3, the 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. Under article 55, paragraph 4, in the course of its work, the Committee may draw on appropriate information from bodies established under the Agreement, as well as relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as may be required.

⁸¹ ECE/EB.AIR/53, decision 1997/2, annex, para. 1.

⁸² [FCCC/KP/CMP/2006/10/Add.1](#), decision 4/CMP.2, annex, rule 4, para. 1.

⁸³ ECE/MP.WAT/37/Add.2, decision VI/1, annex I, para. 3.

⁸⁴ See, for example, [UNEP/CBD/BS/COP-MOP/1/15](#), decision BS-I/7, annex, sect. II, para. 2; [UNEP/CHW.6/40](#), [UNEP/CHW.6/40/Corr.1](#), [UNEP/CHW.6/40/Corr.2](#), [UNEP/CHW.6/40/Corr.3](#) and [UNEP/CHW.6/40/Corr.4](#), decision VI/12, appendix, para. 3; [UNEP/MC/COP.2/Dec.4](#), decision MC-2/4, annex, rule 3, para. 1; London Protocol, document LC 39.16/Add.1, annex 5, para. 3.1; [FCCC/PA/CMA/2018/3/Add.2](#), decision 20/CMA.1, annex, para. 5; [UNEP/CBD/NP/COP-MOP/DEC/1/4](#), annex, sect. B, para. 2; [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 2; [UNEP/POPS/COP.11/31](#), decision SC-11/19, annex, para. 4; and International Treaty on Plant Genetic Resources for Food and Agriculture, resolution 2/2011, annex, part III, para. 2.

⁸⁵ ECE/EB.AIR/53, decision 1997/2, annex, para. 1.

⁸⁶ [FCCC/KP/CMP/2005/8/Add.3](#), decision 27/CMP.1, annex, part II, para. 3. However, there are also bodies such as the Subsidiary Body on Implementation under the Convention on Biological Diversity and the Subsidiary Body for Implementation under the United Nations Framework Convention on Climate Change, which are open-ended subsidiary bodies open to all members.

around United Nations or other regional groups is common. For example, the committee for administering the mechanisms for promoting implementation and compliance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal has 15 members nominated by Parties based on equitable geographical representation of the five regional groups of the United Nations and elected by the Conference of the Parties.⁸⁷ Similarly, the Implementation and Compliance Committee under the Minamata Convention on Mercury has 15 members nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations.⁸⁸

62. The Agreement also provides for a requirement to take gender balance into consideration in the selection process for members of the Implementation and Compliance Committee. The Conference of the Parties may further specify at what stage this should occur, for example during nomination or election.

Term of office and renewal

63. The Agreement does not specify the term of office for members of the Committee. The Conference of the Parties may consider this aspect, including whether to set term periods and/or criteria for re-election. In practice, there are examples of four-year terms,⁸⁹ with the possibility of re-election. Two-term limits are common.⁹⁰ Staggered terms of office have also been implemented.⁹¹ The frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

F. Scientific and Technical Body

Eligibility and selection criteria

64. Pursuant to article 49, paragraph 2, of the Agreement, the Scientific and Technical Body shall be composed of members serving in their expert capacity and in the best interest of the Agreement, nominated by Parties and elected by the Conference of the Parties, with suitable qualifications, taking into account the need for multidisciplinary expertise, including relevant scientific and technical expertise and expertise in relevant traditional knowledge of Indigenous Peoples and local communities, gender balance and equitable geographical representation.

65. The Agreement does not define what “suitable qualifications” are in this context, and these may be specified by the Conference of the Parties. The types of qualifications required by similar bodies under other instruments have generally been specified in their respective terms of reference⁹² or rules of procedure⁹³ and include specific fields of expertise relevant to the functions and responsibilities of those bodies. For example, members of the Scientific Advisory Committee under the International Treaty on Plant Genetic Resources for Food and Agriculture shall be

⁸⁷ [UNEP/CHW.6/40](#), [UNEP/CHW.6/40/Corr.1](#), [UNEP/CHW.6/40/Corr.2](#), [UNEP/CHW.6/40/Corr.3](#) and [UNEP/CHW.6/40/Corr.4](#), decision VI/12, appendix, para. 3. See also [UNEP/FAO/RC/COP.9/23](#), decision RC-9/7, annex, para. 2, and [UNEP/POPS/COP.7/36](#), decision SC-7/26, annex, para. 6.

⁸⁸ Minamata Convention on Mercury, art. 15 (3).

⁸⁹ See, for example, [FCCC/KP/CMP/2005/8/Add.3](#), decision 27/CMP.1, annex, part IV, para. 2, and part V, para. 2; and [UNEP/CBD/NP/COP-MOP/DEC/1/4](#), annex, sect. B, para. 5.

⁹⁰ See, for example, Montreal Protocol, decision IV/5, annex IV, para. 5; [UNEP/CBD/NP/COP-MOP/DEC/1/4](#), annex, sect. B, para. 5; and [UNEP/MC/COP.2/Dec.4](#), annex, rule 3, para. 5.

⁹¹ See, for example, [UNEP/MC/COP.2/Dec.4](#), annex, rule 3, para. 3.

⁹² See, for example, Convention on Migratory Species, resolution 1.4, para. 3; and [UNEP/MC/COP.4/Dec.11](#), para. 12.

⁹³ See, for example, [ISBA/C/12](#), rules 81 and 83.

selected for their scientific expertise and understanding of the Treaty and the related Global Information System, taking into account the need for specialized and in-depth expertise in eight specific fields listed in its terms of reference.⁹⁴ Members of the Legal and Technical Commission of the International Seabed Authority shall have appropriate qualifications, such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise.⁹⁵ An approach that lists particular expertise relating to relevant traditional knowledge of Indigenous Peoples and local communities was not found in the practice of similar bodies with related mandates. However, the terms of reference for the Open-ended Scientific Group under the Minamata Convention on Mercury specify that members should have expertise in various fields, including “indigenous knowledge and local community knowledge”.⁹⁶

66. Suitable qualifications for the Scientific and Technical Body, on the basis of the functions laid out in the Agreement,⁹⁷ may include scientific and technical expertise and/or professional experience in the fields of marine biology, oceanography, environmental science, relevant traditional knowledge of Indigenous Peoples and local communities and other relevant fields, as well as scientific and technical expertise and/or professional experience in relation to measures such as area-based management tools, including marine protected areas, including expertise in the criteria listed in Annex I to the Agreement, and in relation to environmental impact assessments, including screening thresholds, cumulative impacts and strategic environmental assessments.

Number of members

67. The Agreement does not specify the number of members of the Scientific and Technical Body, which may be specified by the Conference of the Parties. Practice under other multilateral instruments varies widely and may depend on the particular functions of the body. In some cases, the number of members is limited. For example, the Scientific Council of the Convention on the Conservation of Migratory Species of Wild Animals is to have no more than eight members,⁹⁸ and the Technology and Economic Assessment Panel of the Montreal Protocol “should be about 18–22 members”,⁹⁹ while the Chemical Review Committee under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Persistent Organic Pollutants Review Committee under the Stockholm Convention on Persistent Organic Pollutants are both

⁹⁴ International Treaty on Plant Genetic Resources for Food and Agriculture, resolution 3/2015, annex 3.

⁹⁵ [ISBA/C/12](#), rule 83.

⁹⁶ UNEP/MC/COP.4/Dec.11, para. 12.

⁹⁷ The specific functions of the Scientific and Technical Body are set out in the relevant parts of the Agreement, including the following: in part III, in relation to proposals (art. 19 (5) and (6)), publicity and preliminary review of proposals (art. 20), consultations on and assessment of proposals (art. 21 (7) and (8)), emergency measures (art. 24 (3) and (5)) and monitoring and review (art. 26 (3) and (4)); in part IV, in relation to the obligation to conduct environmental impact assessments (art. 28 (3)), relationship between the Agreement and environmental impact assessment processes under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies (art. 29 (3)), process for environmental impact assessments (art. 31 (1) (a) (iv) and (3)), environmental impact assessment reports (art. 33 (4), (6) and (7)), reporting on the impacts of authorized activities (art. 36 (2) and (3)), review of authorized activities and their impacts (art. 37 (4) (c)) and standards and/or guidelines to be developed by the Scientific and Technical Body related to environmental impact assessments (art. 38 (1) and (2)); and in part VI, on the Scientific and Technical Body (art. 49).

⁹⁸ Convention on Migratory Species, resolution 1.4, para. 4 (a).

⁹⁹ Montreal Protocol, decision XXIV/8, annex, para. 2.1.1.

composed of 31 members.¹⁰⁰ Flexibility is provided in the case of other subsidiary bodies. For example, the composition of the Legal and Technical Commission of the International Seabed Authority is set at 15 members, with the possibility of including additional experts as necessary.¹⁰¹ In practice, the Council of the International Seabed Authority has increased the number of seats of the Legal and Technical Commission on several occasions.¹⁰² Under some instruments, such bodies are open-ended bodies that are open to participation by all Parties.¹⁰³

Selection process

68. The nomination and election process for the members of the Scientific and Technical Body, including with regard to how equitable geographical representation is to be taken into account, may be further specified by the Conference of the Parties. In the practice of similar bodies under other multilateral instruments, regional groups or geographic regions are generally utilized in the nomination process, with a certain number of members being designated per regional group or region. For example, the Animals Committee and Plants Committee under the Convention on International Trade in Endangered Species of Wild Fauna and Flora comprise one or two candidates selected by each of the major geographic regions under the Convention,¹⁰⁴ as well as a specialist on zoological nomenclature (Animals Committee) or botanical nomenclature (Plants Committee).¹⁰⁵

69. Gender balance is to be taken into account in the composition of the Scientific and Technical Body. The Conference of the Parties may consider at what stage this should occur, for example during nomination or election.

Term of office and renewal

70. Article 49, paragraph 2, of the Agreement makes specific reference to the Conference of the Parties determining the term of office for members of the Scientific and Technical Body. Practice under other multilateral instruments for similar bodies is varied and includes terms spanning two meetings of the Conference of the Parties¹⁰⁶ and three-,¹⁰⁷ four-,¹⁰⁸ and five-year terms.¹⁰⁹ Term limits also vary, with some examples including the possibility of reappointment for one term,¹¹⁰ specifying no more than two consecutive terms¹¹¹ or providing a conditional third term for those experts whose experience is considered relevant for the tasks of the body.¹¹² To ensure continuity of membership, staggered term limits are foreseen in some cases. For

¹⁰⁰ [UNEP/FAO/RC/COP.1/33](#), annex I, decision RC-1/6, para. 1; and [UNEP/POPS/COP.1/31](#), to decision SC-1/7, annex, para. 3.

¹⁰¹ [ISBA/C/12](#), rule 77.

¹⁰² [ISBA/27/C/23](#), para. 4.

¹⁰³ For example, the Subsidiary Body on Scientific, Technical and Technological Advice under the Convention on Biological Diversity and the Subsidiary Body for Scientific and Technological Advice under the United Nations Framework Convention on Climate Change.

¹⁰⁴ The major geographical regions under the Convention on International Trade in Endangered Species of Wild Fauna and Flora are: Africa; Asia; Europe; North America; Central and South America and the Caribbean; and Oceania.

¹⁰⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, resolution Conf.18.2, annex 2, para. 5.

¹⁰⁶ *Ibid.*, para. 7.

¹⁰⁷ Ramsar Convention, resolution 5.5.

¹⁰⁸ [UNEP/FAO/RC/COP.1/33](#), annex I, decision RC-1/6, para. 5; and [UNEP/POPS/COP.1/31](#), annex I, decision SC-1/7, annex, para. 8.

¹⁰⁹ [ISBA/C/12](#), rule 80, para. 1.

¹¹⁰ *Ibid.*; and Montreal Protocol, decision XXIV/8, annex, para. 2.3.

¹¹¹ [UNEP/POPS/COP.1/31](#), decision SC-1/7, annex, para. 8; and [UNEP/FAO/RC/COP.1/33](#), decision RC-1/6, para. 5.

¹¹² Ramsar Convention, resolution XII.5, annex 1, para. 33.

example, the decision establishing the Chemical Review Committee under the Rotterdam Convention provides for a standard four-year term, with one half of the members of each region nominated for an initial term of two years.¹¹³ As with all subsidiary bodies, the frequency and intervals of meetings of the Conference of the Parties may influence membership terms.

IV. Possible action by the Preparatory Commission

71. In the light of the above, with the support of the Secretary-General, the Preparatory Commission could consider taking the following actions to facilitate the consideration by the Conference of the Parties of the terms of reference and modalities for the operation of, and rules of procedure for, the subsidiary bodies established under the Agreement:

- (a) Where not specified in the Agreement, determine whether rules of procedure, terms of reference and modalities are to be developed for the various bodies, and in what form they should be adopted, as well as determining which elements should be included in each document and developing each of these elements;
- (b) With regard to membership of subsidiary bodies, for each subsidiary body:
 - (i) Develop eligibility criteria and selection criteria, in line with the guidance provided in the Agreement, where applicable;
 - (ii) Determine the number of members;
 - (iii) Develop the selection process;
 - (iv) Determine the term of office;
 - (v) Determine renewal modalities, as appropriate.

¹¹³ [UNEP/FAO/RC/COP.1/33](#), annex I, decision RC-1/6, para. 4.