How could a preparatory commission contribute to rapid & effective implementation of BBNJ?

What is a Preparatory Commission?
Preparatory Commissions (PrepComs) are often established after the signing of international agreements to prepare for their entry into force (e.g. UN PrepCom, 1945, UNCLOS/ISA PrepCom, 1982). They typically draft key documents, e.g. Rules of Procedure, agendas, financial regulations and other modalities that lay the groundwork for the functioning of the international agreement and its subsidiary bodies for adoption of the first Conference of the Parties. A PrepCom thus contributes to a rapid operationalization of the agreement once it enters into force.

Why would a Preparatory Commission be advisable for BBNJ?
The BBNJ agreement requires a significant number of decisions to be made at the first Conference of the Parties (COP), including adoption of Rules of Procedure and budget, establishing the frequency of the COP meetings, and determining the size, terms of reference and modalities of subsidiary bodies.

Without early consultation and drafts that propose resolutions to some of these issues in the context of a PrepCom, producing and adopting these key documents would take a large amount of time away from the first (and likely subsequent) Conferences of the Parties.

This would not only delay the full implementation of the BBNJ agreement, but also make it harder for States to meet other international commitments, such as Kunming Montreal Global Biodiversity Framework Target 3 for the protection of 30% of marine and coastal areas by 2030.

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1 See Article 15, paragraph 2 (Access & benefit-sharing committee, by a CoP); Article 46, paragraph 2 (capacity-building and transfer of marine technology committee, by a CoP); Article 47, paragraph 4 (CoP, at CoP1); Article 49 , paragraph 2 (STB, at CoP1); Article 50, paragraph 1 (Secretariat, at CoP1); Article 51, paragraph 2 (Clearing-House Mechanism, by a CoP); Article 52, paragraph 14 (Finance Committee, by a CoP); Article 55, paragraph 3 (Implementation and Compliance Committee, at CoP1).
What modalities would a Preparatory Commission need to function well?
A PrepCom would need to be granted the necessary legal authority to establish subsidiary bodies (e.g. an interim Science & Technology Committee) and to enter into needed contracts. It would also require support by an interim-Secretariat, for which the Division of Oceans and Law of the Sea (DOALOS) would be the obvious choice. Expenses could be met from the regular budget of the United Nations, subject to necessary approval by the UN General Assembly. The PrepCom could continue using the Rules of Procedure of the Intergovernmental Conference.

What could be key priorities for the Preparatory Commission’s work?
Some of the necessary decisions will affect the early functioning of the agreement more than others. It is also important to maintain equity across the main pillars of the agreement. Key priorities could include:

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

How can a Preparatory Commission be established?
With the Agreement now adopted, the next step would be to establish a PrepCom through a General Assembly Resolution before the end of 2023; either as part of the Oceans Omnibus resolution (usually negotiated in November) or in a standalone resolution.