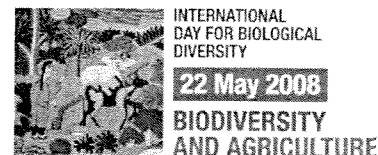




Secretariat of the Convention on Biological Diversity



EXPLANATORY NOTE FROM THE CO-CHAIRS OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING REGARDING A WORKFLOW SCENARIO FOR WGABS-7

Introduction

The following note is intended to further meet the Co-Chairs' ongoing commitment, in the service of the Parties, to implementing principles of transparency, openness, predictability and responsiveness.

The purpose of this note is to provide informally, in advance of consultations, an outline and associated rationale for the workflow at the Seventh Meeting of the Working Group on Access and Benefit-sharing (WGABS-7).

It is recommended that the note be read in conjunction with, inter alia, the following documents prepared by the Secretariat: UNEP/CBD/COP/DEC/IX/12, UNEP/CBD/WG-ABS/7/1, UNEP/CBD/WG-ABS/7/1/ADD1, and UNEP/CBD/WG-ABS/7/7.

Aim

Given the high degree of specificity provided to the Working Group from the Conference of the Parties through Decisions IX/12 regarding the inputs to and the basis for negotiation, as well as both the subjects for negotiation and the order in which they will be addressed by the Working Group, it is critical that the meeting minimizes, to the greatest practicable degree, discussions on procedure and process.

The two days allotted for informal and regional consultations, prior to the commencement of the Working Group meeting proper on 02 April, provide a key opportunity to establish a common understanding of process in order to ensure a speedy discussion of the agenda and organisation of work and, subsequently, to ensure efficient negotiations of substance.

We draw your attention to the fact that the Conference of the Parties has provided the Working Group with a maximum of 21 days, spanning three meetings of the Working Group, within which to finalise the International Regime.

Context

Decision IX/12, in effect, takes a 'holistic' approach to the workflow of the remaining three negotiating rounds for the International Regime. The Decision prescribes the following: (i) at the seventh meeting, the negotiation of operational text on the objective, scope, compliance, fair and equitable benefit-sharing, access; (ii) at the eighth meeting, the negotiation of operational text on nature, traditional knowledge associated with genetic resources, capacity-building, compliance, fair and equitable benefit-sharing,



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access; (iii) and, at the ninth meeting, the consolidation of all operational text developed at the seventh and eighth meetings.

Approach

Given the above, the task for WGABS-7, in concise terms, is to negotiate operational text on **objective, scope, compliance, fair and equitable benefit-sharing, and access.**

The Working Group will not return to objective and scope until WGABS-9, when these two subjects will necessarily be dealt with in the context of the consolidation exercise mandated by Decision IX/12. It follows, therefore, that in Paris the Group should work to negotiate and finalise the draft text contained in Annex I concerning both objective and scope. Given views expressed to date, we believe that this goal is both tenable and highly desirable for the Working Group at its seventh meeting.

While the Working Group is to return to compliance, fair and equitable benefit-sharing and access at its eighth meeting, it must also deal at that time with other important and challenging issues – i.e., nature and traditional knowledge associated with genetic resources. This suggests that it would be most efficient at WGABS-7 to ‘suspend’ debate over nature (i.e., avoid engaging in nature-related negotiations) and instead focus on negotiating concise and clear operative text for the various measures proposed for compliance, fair and equitable benefit-sharing and access. In turn, the nature of the Regime and its measures can be discussed in an organised fashion on the basis of clearly articulated operative text at WGABS-8 at the appropriate time.

Documentation

Amongst the important inputs for WGABS-7 is included:

- Submissions from Parties, other Governments, international organizations and indigenous and local communities, and relevant stakeholders, including operational text;
- Reports from technical and legal experts groups on (i) compliance; and (ii) concepts, terms, working definitions and sectoral approaches;
- Studies on: (i) recent developments in methods to identify genetic resources directly based on DNA sequences; (ii) to identify the different possible ways of tracking and monitoring genetic resources through the use of persistent global unique identifiers, including the practicality, feasibility, costs and benefits of the different options; (iii) how an international regime on access and benefit-sharing could be in harmony and be mutually supportive of the mandates of and coexist alongside other international instruments and forums that govern the use of genetic resources, such as the FAO International Treaty on Plant Genetic Resources for Food and Agriculture; and (iv) development of a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions.

It is important to recall that the Conference of the Parties has determined that Annex I to Decision IX/12 is the basis for further elaboration and negotiation of the international regime (available as document UNEP/CBD/WG/ABS/7/7).

It follows, therefore, that negotiation of operational text at WGABS-7 should be organized in the manner set out in Annex 1: that is to say, by main component and in line with the methodology reflected within the Annex through the employment of “bricks” and “bullets” – i.e., operational text of components

“to be further elaborated with the aim of incorporating them into the international regime” and operational text of components “for further consideration”.

Organisation of Work

Our informal discussions to date confirm Working Group members have a strong desire and, indeed, expectation to continue to work in plenary to the greatest extent possible. This view is based on interests of transparency, comprehension and fairness. There is, however, a general recognition that the Working Group will need to turn to informal contact groups over the course of the three Working Group meetings mandated by the COP, given the enormity of the task at hand and the need to complete work in 2010 at the latest. The key is to limit the number of concurrent contact group sessions, ensure a common understanding of the mandate of a particular group and provide open access to these groups.

It is envisioned that two informal contact groups would be established at the outset of WGABS-7. Items would be assigned to these two groups, but only following initial plenary discussions of each item. Contact group co-chairs would be confirmed by the Working Group, as would contact group mandates. Contact group co-chairs would be required to report to plenary on a regular, stipulated basis.

As per “Documentation” above, contact groups will work on the basis of Annex 1. Broadly described, the task for contact groups is to reach agreement on operational text to be incorporated under each of the headings of this document using the approach outlined above, taking advantage of the compilation of contributions prepared by the Secretariat, and other proposals that may be made by Parties at the appropriate time in Plenary in accordance with the proposed organization of work.

Summary

Prospects have never been higher in this working group for affecting rapid progress on substance. The Conference of the Parties has provided a clear mandate, basis, and timeline for the inter-sessional period. Nevertheless, time and resources are short. A shared understanding of the potential workflow of WGABS-7 should serve to accelerate the pace of negotiation in Paris. To that end, the above thoughts are provided for consideration but are made, of course, without prejudice to the final determination by the Working Group itself when it convenes on 02 April 2009.
