

Ref.: SCBD/SEL/OJ/GD/69410

28 October 2009

NOTIFICATION

Subject: Eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, Montreal, 9-15 November 2009

Scenario note from the Co-Chairs of the Working Group

Dear Madam/Sir,

With reference to the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, the Secretariat is pleased to circulate herewith a scenario note from the Co-Chairs of the Working Group, the purpose of which is to provide informally and in advance of pre-meeting consultations, an outline and associated rationale for the workflow during the eighth meeting of the Working Group.

The note is also available on the Secretariat website as part of the pre-session documentation for the meeting under the following link: <https://www.cbd.int/doc/?meeting=ABSWG-08>.

Please accept, Madam/Sir, the assurances of my highest consideration.

Ahmed Djoghlaif
Executive Secretary

To: CBD National Focal Points, ABS National Focal Points, international organizations, indigenous and local community organizations and stakeholders

SCENARIO NOTE FROM THE CO-CHAIRS FOR THE EIGHTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING (WGABS-8)

A. Introduction

1. We have been approached by several Working Group members who have asked us what to expect at the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. While we have responded to these inquiries in a preliminary fashion as they arose, we believe that it is important to share with all Working Group members our expectations for this meeting and our emerging plans to help ensure the Group meets these expectations. This is consistent with our commitment made at the outset of our tenure to transparency, openness, predictability and responsiveness.

2. As per our explanatory notes for previous Working Group meetings, the purpose of this note is to provide informally and in advance of pre-meeting consultations, an outline and associated rationale for the workflow during the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing. Further, the note describes our emerging expectations regarding the eighth meeting. These expectations are based on a close reading of the relevant decisions of the Conference of the Parties and on our understanding of the Group's need to make significant substantive progress on the regime text at the eighth meeting of the Working Group.

3. We draw your attention to the following documents which can be usefully read in conjunction with this note: decision IX/12 of the Conference of the Parties and the provisional agenda and the annotations thereto for the present meeting (UNEP/CBD/WG-ABS/8/1 and Add1).

B. Aim

4. In plain language, the eighth meeting is from our perspective the most important meeting in the history of this Working Group.

5. With a mere fourteen days left of formal negotiations the Working Group must not only pull together draft operative text on the major components of the international regime, but make significant progress on reducing text, clarifying potential obligations and negotiating nature. The results of the Montréal meeting must enable the Working Group, at its ninth meeting, to finalize the drafting of the international regime in order to meet the mandated deadline.

C. Context

6. Decision IX/12 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, access; (iii) and, at the ninth meeting, the consolidation of all operational text developed at the seventh and eighth meetings.

D. Approach to the eighth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing

7. According to decision IX/12 the Working Group, at its eighth meeting is to negotiate operational text on nature, traditional knowledge associated with genetic resources, capacity-building, compliance, fair and equitable benefit-sharing and access. It should be noted, therefore, that in the case of some main components (i.e., compliance, fair and equitable benefit-sharing, and access) the Working Group is in fact resuming text negotiations where they left off at the end of their seventh meeting. In the case of other components (i.e., traditional knowledge associated with genetic resources, and capacity-building) the Group will be taking these items up for the first time in this current intersessional period.

8. As per above, the Working Group will begin its eighth meeting by "negotiating on nature, followed by clearly identifying the components of the international regime that should be addressed

through legally binding measures, non-legally binding measures or a mix of the two and to draft these provisions accordingly.” This instruction from the Conference of the Parties at its ninth meeting involves two related *but distinct* steps.

9. While we do not envision a protracted debate in Montréal on nature, the negotiation on this question should attempt to reach an understanding in the Working Group on Access and Benefit-sharing, for the ultimate purpose of completing its mandate, on what these negotiations are aiming at in terms of nature. This understanding would be reflected in the report of the meeting, as adopted on the final day of the eighth meeting of the Working Group on Access and Benefit-sharing. The second related step, which flows from the initial negotiation on nature, is addressed below.

10. For those main component items taken up at the seventh meeting and to again be taken up in Montreal (i.e., compliance, benefit sharing and access) the Working Group will negotiate on the basis of the Paris Annex -- with due consideration given to written submissions received that build on the Paris Annex.

11. We expect for these items that the Working Group will make tangible progress on: clarifying the nature of potential obligations under each of these components (i.e., legally binding measures, non-legally binding measures or a mix of the two) and to drafting these provisions accordingly; reducing duplication; refining options; deleting irrelevant text, and; removing/deleting brackets.

12. In the case of the traditional knowledge associated with genetic resources and capacity-building, the Working Group must of course first complete the exercise of building a text for further negotiation, bearing in mind that there is no longer a distinction to be made between “components to be further elaborated” and “components to be further considered”. The basis for this exercise is the relevant parts of annex I to decision IX/12, written submissions of operative text received and proposals made on the floor. As well, delegations may wish to refer to the reports of the technical and legal experts (TEG) meetings (in particular the report of the TEG meeting on traditional knowledge associated with genetic resources) and relevant results from deliberations on the international regime held in the previous week at the sixth meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions.

13. While a number of issues related to these items are challenging, the volume of text is relatively small. As a result, we believe it is possible for the Working Group to make headway on both items in terms of: clarifying the nature of potential obligations and drafting provisions accordingly under each of these components; reducing duplication; refining options; deleting irrelevant text, and; removing/deleting brackets.

E. Documentation

14. Amongst the number of key documents for the eighth meeting of the Working Group are included:

- Annex I to decision IX/12 (UNEP/CBD/WG-ABS/7/7);
- The report of the seventh meeting of the Working Group, including the “Paris Annex”: (UNEP/CBD/WG-ABS/7/8);
- Collation of operative text submitted on nature, traditional knowledge associated with genetic resources, and capacity-building (UNEP/CBD/WG-ABS/8/3);
- Collation of operative text submitted on nature, traditional knowledge associated with genetic resources, and capacity-building, including related explanations and rationale (UNEP/CBD/WG-ABS/8/4);
- Collation of contributions submitted on Compliance, Fair and Equitable Benefit-sharing and Access (UNEP/CBD/WG-ABS/8/6);

- Report of the Meeting of the Group of Technical And Legal Experts on Traditional Knowledge Associated with Genetic Resources in the Context of the International Regime on Access and Benefit-sharing (UNEP/CBD/WG-ABS/8/2/ and UNEP/CBD/WG-ABS/8/2/Corr1).

F. Organization of work

15. Working Group members continue to have a strong desire to work in plenary to the greatest extent possible. There is, however, a general recognition of the need to employ informal contact groups given the volume of work before the Group, the detailed nature of the text negotiations and the increasing time pressures.

16. We are considering establishing contact groups, as necessary, on the following main components: benefit-sharing and access; compliance; traditional knowledge; capacity-building. As in previous Working Group meetings, we will limit the number of concurrent contact group sessions to two. Again as per past practice, short plenary sessions at the end of most days are envisioned -- given the need for contact group co-chairs to provide the whole group with updates on progress and for consideration of any possible evening sessions. Contact group co-chairs will be confirmed in plenary, as will mandates in order to avoid confusion and counter-productive debate.

17. The Secretariat has advised us that interpretation in all six official United Nations languages will be available for a total of six hours per day. It is our intention to prioritize the use of interpretation for plenary and for initial discussions of components and issues we are newly taking up (e.g., traditional knowledge, capacity-building). As the week progresses, the interpretation team may be deployed on other component negotiations (e.g., benefit-sharing, access, compliance).

18. We have approached by a number of delegations regarding possible night sessions. Given that there are a mere fourteen days of formal negotiations remaining, delegations are advised to prepare for evening sessions of contact groups.

G. Possible outcomes of the eighth meeting of the Working Group

19. The following is a list of expectations we have for possible meeting outcomes:

Nature:

- Clarified understanding on nature and the direction the Working Group is aiming in this regard.

Compliance, benefit-sharing, and access:

- All provisions of operational text drafted through legally-binding measures, non-legally binding measures or a mix of the two; reduction and streamlining of text in progress.

Traditional knowledge and capacity-building:

- Operational text drafted through legally-binding measures, non-legally binding measures or a mix of the two; reduction and streamlining of text in progress.

Additional items:

- Preliminary identification of potential supplementary regime elements/articles/sections (e.g., preamble, final clauses, annexes).

20. At the conclusion of the eighth meeting of the Working Group, the report of the meeting would have as its annex, the comprehensive operational text of the international regime consisting of all drafted provisions during the meeting, recognizing that some of these provisions will likely need further streamlining.

H. Post-eighth meeting of the Working Group

21. The Co-Chairs have been informally queried about possible steps to be taken between the eighth and the ninth meetings of the Working Group.
22. The Ad Hoc Open-ended Working Group on Access and Benefit-sharing remains the legitimate subsidiary body for the negotiation of the international regime under the Convention on Biological Diversity. This Group and its members are responsible for delivering on this mandate and must retain responsibility for doing so.
23. Any discussion of possible subsequent steps can not reasonably occur until the degree of progress likely to be achieved in Montréal is clear.
24. It must be recognized that the Working Group's time is highly constrained and that key regional and inter-regional discussions between the eighth and ninth meetings will need to be used to the greatest possible effect in order to finalize the regime text at the ninth meeting of the Working Group.
25. The Working Group and the Bureau will need to address this issue before the conclusion of the eighth meeting of the Working Group on Access and Benefit-sharing.
26. In this and all other matters, we confirm our commitment to the principles of transparency, predictability, openness and responsiveness.

I. Summary

27. With a clear mandate from the Conference of the Parties, and building on progress made in Paris, we believe that the Working Group can achieve concrete progress on all major items on its agenda for Montréal. This is not to underestimate the volume of work ahead and the degree of complexity involved. However, we note Parties confirmed at the conclusion of the seventh meeting of the Working Group that not only are they prepared to continue to comply with the mandate of the group given by the Conference of the Parties and therefore willing to further negotiate but in fact that they are anxious to so.
28. We are convinced that with a clear process in place and a shared commitment to negotiate, the Working Group is poised to make significant progress in Montréal.

Timothy Hodges

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Co-Chairs

Ad Hoc Open-ended Working Group on Access and Benefit-sharing

28 October 2009
