

**SCENARIO NOTE FROM THE CO-CHAIRS FOR THE RESUMED NINTH MEETING OF
THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING
(WGABS-9 RESUMED)**

A. Introduction

1. In response to requests made by a number of Working Group members, we have drafted the following scenario note for the resumed ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing, in Montreal, 10-16 July 2010.
2. We are pleased to share with you our expectations for this meeting and our emerging plans to help to ensure the Group meets these expectations. This is, once again, consistent with our commitment made at the outset of our tenure to transparency, openness, predictability and responsiveness.
3. This note results from and is in response to our ongoing informal consultations with Parties, regions and groups, the COP-9 Bureau, indigenous and local communities and stakeholders in recent weeks. It is founded on our clear understanding of the Group's ever-growing desire to meet its commitment to the Conference of the Parties (COP) to negotiate a finalized text in order to allow sufficient time to prepare for consideration of its adoption in October at the tenth meeting of the Conference of the Parties.

B. Aim

4. In Montreal, the Working Group will in effect pick up where it left off in Cali and complete its charge from the Conference of the Parties as set out in decision IX/12 – i.e., the “consolidation of all operational text developed at the seventh and eighth meetings of the Working Group.”
5. Given the negotiations are aiming at finalizing a protocol text in time for its possible adoption at the tenth meeting of the Conference of the Parties, Working Group members should bear in mind that while only seven days remain to negotiate the text, this is an exceptional opportunity and one which we must all work to jointly ensure is used to full effect.

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. Considerations

7. You are aware that the Working Group took yet another significant progressive step in Cali by ensuring before it adjourned that a draft protocol could go forward as per Article 28 of the Convention. The task before the Working Group in Montreal is to finalize the negotiation of the revised draft protocol tabled by the Co-Chairs in its entirety, which will be achieved through isolating and resolving outstanding issues and identifying and filling any gaps, while ensuring the integrity and balance of the text overall. The current text takes a “package approach” and we believe that, in order to be successful (i.e., achieve agreement across the regions), the Working Group should from the outset approach the challenge of Montreal from a “package deal” perspective.

E. Formal documentation

8. The key document for the resumed Working Group meeting is the report of the first part of the ninth meeting of the Ad Hoc Open Ended Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/9/3), which includes the following:
 - i. The report of the ninth meeting of the first part of the ninth meeting of the Working Group on Access and Benefit-sharing;

- ii. Annex I: Revised draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity;
- iii. Annex II: Draft COP-10 decision on: “Adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair And Equitable Sharing of Benefits Arising from Their Utilization.”

9. Numerous other documents are of direct relevance – e.g., the WGABS-8 report and annexes. Such documents have been made available on the Secretariat website.

F. Informal documentation

10. Reflecting on the above realities and following constructive discussions in Cali, in the Co-Chairs Informal Interregional Consultation and during the subsequent negotiations in the Working Group, we will shortly produce a *Further Revised Co-Chairs’ Guidance Note*, which will take a package approach and focus on the key outstanding issues.

11. It is not our intention to produce additional informal documentation in advance of resuming the Working Group meeting.

G. Other issues for consideration at the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing

12. While it is fully recognized that the focus of our efforts in Montreal must be finalizing the protocol, a number of delegations have pointed out that the draft COP-10 decision (which, it should be recalled, was briefly reviewed in Cali) may potentially prove relevant to substantive matters related to the protocol negotiations. If, indeed, this is the case and a second review of the draft COP-10 decision is warranted, we are prepared to consider a means to facilitate such a review without distracting the primary focus on the protocol negotiations. This must be a needs-based approach and one agreed to in plenary.

H. Organization of work

13. Working Group members have a strong desire to work in plenary to the greatest practicable extent. There is, in addition, a widespread recognition in the Working Group of the need to make rapid progress in text negotiations, while seeking to ensure transparency, openness, inclusiveness and fairness.

14. The meeting will begin with a plenary session, in which the Co-Chairs will inform Plenary on results of their consultations with Parties, regions and stakeholders, on 8-9 July, and on their discussions with the Bureau. In order to provide maximum time for negotiations and given this is the continuation of the ninth meeting of the Working Group on Access and Benefit-sharing, no opening statements by dignitaries are expected. Regional groups and others would have the opportunity to make very brief statements if it were felt to be of broader importance and utility.

15. We intend to propose moving promptly to a Cali-style interregional group format (i.e., the setting employed in the first part of the ninth meeting of the Working Group) in order to advance the negotiations. The interregional group will include, at any one time at the table, no more than five representatives of each United Nations regional group and two representatives each from indigenous and local communities, civil society, industry and public research groups. Regional groups may change their representatives from time to time during the negotiations as they deem appropriate. As remains the practice, ILC and stakeholder representatives are most welcome to provide guidance in the usual measured manner, but Parties will retain the prerogative to determine text.

16. Again, all interested members of the Working Group will be invited to attend the meetings of the interregional group. The representatives at the table can be replaced by other members of their delegation, such as technical experts, where necessary, and seats will be provided nearby for other members of delegations.

17. Plenary will determine the mandate of the Interregional Group and appoint its co-chairs. The interregional group will have three days in the Cali-setting to conduct its task (i.e., negotiate the protocol text) prior to an assessment of progress in plenary on the morning of Day Four to ensure the process is fully on track and delivering needed results. Nevertheless, it is our intention to be updated twice daily by

the Interregional Group co-chairs as well as to directly observe the evolution of negotiations in order to ensure any potential difficulties are immediately addressed in plenary. In this regard, additional plenary sessions will be held as needed before the fourth day.

18. Given the need to negotiate and finalize the entire draft protocol text and accounting for time constraints, it may prove advisable for the Working Group to establish a legal contact group to review the protocol articles to ensure legal integrity and consistency. This is the usual practice in such processes but first requires progress to be made on the substantive policy issues.

19. We have been approached by a number of delegations regarding possible night sessions. Given that there are only seven negotiating days remaining, delegations are advised to prepare for evening sessions.

I. Results of the resumed ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing

20. The following outputs are envisioned at the end of the resumed ninth meeting of the Working Group:

- i. Formal meeting report of the second part of the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing;
- ii. Annex I: Final draft Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity;
- iii. Annex II: Draft COP-10 decision on: “Adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair And Equitable Sharing of Benefits Arising from Their Utilization.”

J. Post-Montreal plans

21. As the resumed session of the Working Group has been convened to finalize the mandate assigned to the Working Group by the Conference of the Parties at its ninth meeting, the Co-Chairs are not contemplating at this stage intersessional activities between Montreal and Nagoya.

22. Shortly following the resumed ninth meeting of the Working Group, and in addition to the aforementioned outputs of the meeting, a ‘situation report’ will be prepared by the Co-Chairs and sent to all Parties. Ultimately, of course, the Co-Chairs will formally report to the tenth meeting of the Conference of the Parties in Nagoya, transmitting the results of the Working Group’s efforts over the past two years.

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