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### **Biodiversity Convention adopts plan for benefit sharing for genetic sequences**

Austin, Texas, 19 December (Edward Hammond) – Parties to the Convention on Biological Diversity (CBD) have adopted a decision on sequence information of genetic resources that sets in motion a plan intended to lead to an important decision at their next meeting in two years' time.

The decision was adopted by the 22nd meeting of the CBD Conference of the Parties Cancun (COP), Mexico, which ended on Saturday, 17 December.

The plan is a compromise that emerged after developing countries, concerned that the proliferation of sequences and other genetic information in the internet "cloud" is promoting biopiracy, proposed that the Cancun meeting adopt a decision clarifying that sequence information should be treated equivalently to physical biodiversity samples for the purposes of benefit sharing.

Under pressure, developed countries' negotiators acknowledged that gene sequences "are an issue to be dealt with." The European Union, Australia, and others insisted, however, that they were unprepared to negotiate in Cancun because they had not anticipated that the issue would arise. This reason was offered despite a preliminary exchange on the subject at a meeting of the CBD's Subsidiary Body on Science, Technical, and Technological Advice (SBSTTA) in May of this year, and gene sequences appearing in bracketed text in the Convention's draft decision on synthetic biology.

The process that results from the decision begins with a collection of views from Parties and the preparation of a fact-finding study. An Ad Hoc Technical Expert Group (AHTEG) will then consider the results and report to the next SBSTTA meeting in 2017. The SBSTTA then forwards its recommendations, which typically include a draft resolution, for consideration by the next COP, which is scheduled to take place in late 2018 in Sharm el Sheikh, Egypt.

Among the issues that the ATHEG on Digital Sequence Information on Genetic Resources will consider is terminology in relation to the issue. While the term "digital sequence information on genetic resources" is presently being used to describe the topic, several alternatives have been proposed and it is agreed that there is a need for clearer terminology around the issue. From developing countries' perspective, that need includes being sure that there is terminology used that encompasses not only DNA and RNA sequences in various formats, but also amino acid (protein) sequences and other molecular information (e.g. DNA methylation), characterization data, and natural information.

The Convention's new process emerged from its consideration of synthetic biology. Going into the Cancun meeting, gene sequences were referenced in two places in the draft decision on synthetic biology. After initial discussions in the synthetic biology contact

group, which also was dealing with controversial issues including gene drives, sequences were identified as a “cross-cutting” issue relevant to the CBD itself and to its Nagoya Protocol on access and benefit sharing. In the view of many countries the Protocol’s Article 10 on a possible global multilateral benefit-sharing mechanism is particularly relevant.

Thus a ‘Friends of the Chair’ group was formed under the leadership of the Mexican COP Presidency. Developing countries coalesced around a proposal made by Namibia that the CBD take a decision in Cancun expressing the understanding that sequences, or the “soft copy” of genetic resources, should be treated as equivalent to physical samples, the “hard copy” of genetic resources. Other strong proponents of this view included South Africa, Kenya, Brazil and Malaysia, among many others. In addition to the COP decision interpreting the Convention’s definition of genetic resources, Namibia’s proposal would have set in motion work, primarily under the Nagoya Protocol, to develop advice on how Parties should deal with the issue.

Developed countries, however, persistently clung to the argument that they had not anticipated the discussion and was not prepared. With Europe and others unwilling to engage on substance, talks turned to crafting a process by which sequences could be brought to a future decision, with utmost haste in the view of developing countries, given the rapid expansion of genome sequencing and cloud databases.

Mexico ably led discussions to define the process, which took the sequences issue out of the synthetic biology agenda item and established it as a decision under a new and separate COP agenda item.

Some developing countries, concerned about the need for speed, argued for a specific timeline for activities or even an extraordinary COP meeting prior to 2018. After discussion, however, it was generally agreed that since the resolution required SBSTTA to table advice to the COP at its next meeting in two years, that a crisp timeline was effectively built in.

In accordance with the decision and usual CBD Secretariat practice, the collection of views and fact-finding study “to clarify terminology and concepts and to assess the extent and the terms and conditions of the use of digital sequence information on genetic resources” should be completed in about a year, with the AHTEG meeting thereafter, perhaps immediately preceding the meeting of SBSTTA, which will formulate the AHTEG’s work into advice for the COP.

Terms of reference for the AHTEG, in addition to considering the study and terminological questions, include examining “any potential implications of the use of digital sequence information on genetic resources for the three objectives of the Convention and the objective of the Nagoya Protocol and implementation to achieve these objectives.” The AHTEG will also identify the different types of sequence information that are relevant for consideration.

(The 3 CBD objectives are: conservation of biodiversity, sustainable utilization, and fair and equitable benefit sharing. The Nagoya Protocol’s objective is fair and equitable sharing of benefits arising from the utilization of genetic resources.)

A corresponding resolution passed by the COP serving as the Meeting of Parties (COP-MOP) of the Nagoya Protocol implements a “coordinated approach” on the issue with the CBD, in this instance meaning that the Nagoya Protocol may use the outputs of the study and AHTEG in its own work to implement benefit sharing provisions.

Although disappointed by the focus on process, rather than the substance, of the sequences issue, the decisions were widely welcomed as pointing the way towards a the rapid decision that developing countries seek.