



Building International Capacity in Synthetic Biology Assessment and Governance

Decisions of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization related to 'digital sequence information'

Two complementary Decisions of COP 13 of the Convention on Biological Diversity (CBD) and COPMOP 2 of the Nagoya Protocol on Access and Benefit Sharing, were adopted in 2016 to address the issue of 'digital sequence information.'

The issue was first considered under the CBD's agenda item on synthetic biology. The Convention's Ad Hoc Technical Expert Group (AHTEG) on Synthetic Biology, which met in September 2015, had identified the relevance of sequence information to the CBD's objectives and in particular, its access and benefit sharing provisions.

The Twentieth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) could not agree on how to address the issue of sequence information, so this was brought forward to the COP 13 meeting.

Because of the significance and importance of the issue to developing countries, many of which are mega-biodiverse and providers of genetic resources, and because Parties recognized sequence information as a cross-cutting issue relevant to the CBD itself and to its Nagoya Protocol, the issue was elevated at COP 13 to a 'Friends of the Chair' group formed under the leadership of the Mexican COP Presidency. Thus

the two decisions by Parties to the CBD and Parties to the Nagoya Protocol reflect the outcome of these Friends of the Chair discussions.

The decisions set in motion a plan intended to lead to an important substantive decision when the Parties next meet in 2018. 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.

The process established by the decisions begins with a collection of views from Parties and the preparation of a fact-finding study. An AHTEG will then consider the results. It will meet in February 2018 and report to the next SBSTTA meeting in July 2018. The SBSTTA will then forward its recommendations for consideration by the Parties in November 2018.

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

Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity

XIII/16. Digital sequence information on genetic resources

The Conference of the Parties,

Noting that digital sequence information¹ on genetic resources is a cross-cutting issue that may concern the three objectives of the Convention on Biological Diversity,

Noting rapid advances arising from research and development in biotechnology regarding the use of digital sequence information on genetic resources and therefore recognizing the importance of addressing this matter in the framework of the Convention in a timely manner,

Recognizing also the need for a coordinated and non-duplicative approach on this matter under the Convention and the Nagoya Protocol,

1. *Decides* to consider at its fourteenth meeting any potential implications of the use of digital sequence information on genetic resources for the three objectives of the Convention;
2. *Invites* Parties, other Governments, indigenous peoples and local communities, and relevant organizations and stakeholders to submit views and relevant information to the Executive Secretary on the potential implications referred to in paragraph 1;
3. *Requests* the Executive Secretary to:
 - (a) *Prepare* a compilation and synthesis of the views and information submitted, including the information gathered from engagement with relevant ongoing processes and policy debates;
 - (b) *Commission* a fact-finding and scoping study, subject to the availability of financial resources, 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 in the context of the Convention and the Nagoya Protocol;

4. *Decides* to establish an Ad Hoc Technical Expert Group and requests the Executive Secretary, subject to the availability of financial resources, to convene a meeting of this group in accordance with the terms of reference contained in the annex;
5. *Requests* the Subsidiary Body on Scientific, Technical and Technological Advice to consider the outcomes of the ad hoc technical expert group and to make a recommendation on the potential implications of the use of digital sequence information on genetic resources for the three objectives of the Convention for the consideration of the Conference of the Parties at its fourteenth meeting;
6. *Bearing in mind* the need for a coordinated and non-duplicative approach on this matter, invites the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its second meeting, to take a decision requesting the ad hoc technical expert group to be convened in accordance with paragraph 4 above to also serve the Nagoya Protocol.





Annex

Terms of Reference for the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources

The ad hoc technical expert group shall:

- (a) *Consider* the compilation, synthesis and the study referred to in paragraph 3(a) and (b) of the decision in order to examine 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;
- (b) *Consider* the technical scope and legal and scientific implications of existing terminology related to digital sequence information on genetic resources;
- (c) *Identify* the different types of digital sequence information on genetic resources that are relevant to the Convention and the Nagoya Protocol;
- (d) *Meet* at least once face-to-face, subject to the availability of financial resources, prior to the fourteenth meeting of the Conference of the Parties and make use of online tools to facilitate its work, as appropriate;
- (e) *Submit* its outcomes for consideration by a meeting of the Subsidiary Body on Scientific, Technical and Technological Advice to be held prior to the fourteenth meeting of the Conference of the Parties.

¹ Terminology is subject to further discussion in the study and the expert group.



Decision Adopted By The Parties To The Nagoya Protocol On Access And Benefit-Sharing

2/14. Digital sequence information on genetic resources

The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol,

Noting that digital sequence information¹ on genetic resources is a cross-cutting issue that may concern the objective of the Nagoya Protocol,

Also noting rapid advances arising from research and development in biotechnology regarding the use of digital sequence information on genetic resources and therefore recognizing the importance of addressing this matter within the framework of the Nagoya Protocol in a timely manner,

Recognizing the need for a coordinated and non-duplicative approach on this matter under the Convention and the Nagoya Protocol and acknowledging decision XIII/16,

1. *Decides* to consider at its third meeting any potential implications of the use of digital sequence information on genetic resources for the objective of the Nagoya Protocol;
2. *Invites* Parties, other Governments, indigenous peoples and local communities, and relevant organizations and stakeholders to include in their views and relevant information submitted in accordance with paragraph 2 of decision XIII/16 information relevant to the Nagoya Protocol;
3. *Notes* that, in decision XIII/16, the Executive Secretary is requested to compile and synthesize the views and information submitted

and to commission a study, which are to be considered by an ad hoc technical expert group;

4. *Welcomes* the invitation by the Conference of the Parties at its thirteenth meeting, as provided in paragraph 6 of decision XIII/16;
5. *Decides* that the ad hoc technical expert group referred to in that paragraph will also serve the Nagoya Protocol by considering the information relevant to the Nagoya Protocol in the compilation, synthesis and study prepared in accordance with paragraph 3 of decision XIII/16;
6. *Requests* the ad hoc technical expert group to submit its outcomes for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice;
7. *Requests* the Subsidiary Body on Scientific, Technical and Technological Advice to consider the outcomes of the ad hoc technical expert group and to make a recommendation on the potential implications of the use of digital sequence information on genetic resources for the objective of the Nagoya Protocol for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its third meeting.

¹ Terminology is subject to further discussion in the study and the expert group.