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A Report from the First Reflection Meeting on the Global Multilateral Benefit-Sharing Mechanism

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FRIDTJOF NANSENS INSTITUTT
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Access and Benefit Sharing
ABS Capacity Development Initiative for Africa

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Abstract

This FNI Report summarizes the outcome of the deliberations and discussions as a first pre-preliminary discussion on the need for and modalities of a Global Multinational Benefit-sharing Mechanism. These deliberations took place during days in late March 2011, at the Fridtjof Nansen Institute, according to Chatham House rules. The discussions were in no way meant to lead to any agreement or pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on ABS (ICNP-2) in 2012.

One important finding concerns the time-perspective and the overall approach to the development of a mechanism. It was suggested that the modalities of such a benefit-sharing mechanism (BsM) could employ a step-by-step approach, beginning with the identification of common ground of consensus for parts of a mechanism. A methodology of seeking common ground for developing the ideas of a global mechanism might prove helpful for countries when exploring a potential design for the mechanism.

At the reflection meeting the background for the mechanism was outlined as to capture ABS situations not already contributing to the conservation and sustainable use through contracts as is generally assumed. Several possible needs for a mechanism were explored; each of these would probably require separate discussions of their corresponding modalities if the rationale were identified and agreed upon by parties at the second ICNP or later. Overall questions raised were whether contributions should be voluntary or mandatory; whether benefits would be shared from private and/or public sectors; and whether they should be financial and/or non-financial. The main questions regarding the recipient-side discussed were: For what purpose monetary benefits shared through the mechanism may be used; who will select beneficiaries (governance of the mechanism). Although consensus was not the aim, nor achieved, there was a constructive and explorative spirit during the two days of discussion.

Key Words

Nagoya Protocol Article 10, Global Multinational Benefit-sharing Mechanism, genetic resources, transboundary situations, governance, benefit sharing

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Executive Summary

During days in late March, the Fridtjof Nansen Institute hosted a first reflection meeting on the 'global multilateral benefit sharing mechanism' under the Nagoya Protocol (NP), under the Chatham House rules. This report from the meeting summarizes the outcome of the deliberations and discussions without making specific references to participants. A long list of topics relevant for a pre-preliminary discussion of the needs for and modalities of a global mechanism were discussed. The discussions were in no way meant to lead to any agreement or, pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on ABS (ICNP-2) in 2012. As the aim was not to reach consensus, this report does not express any conclusive views on whether such a mechanism is needed or nor does it provide conclusive options on the modalities that could govern for such mechanism. It is emphasised that the number of question-marks increased during the deliberations and that the discussions where more explorative in nature.

One important finding concerns the time-perspective and the overall approach to the development of a mechanism, whether the modalities of such a benefit-sharing mechanism (BsM) could employ a step-by-step approach, beginning with the identification of common ground of consensus for parts of a mechanism. A methodology of seeking common ground for developing the ideas of a global mechanism might prove helpful for countries when exploring a potential design for the mechanism.

At the reflection meeting the background for the mechanism was outlined as to capture ABS situations not already contributing to the conservation and sustainable use through contracts as is generally assumed. Several possible *needs* for a mechanism were explored; each of these would probably require separate discussions of their corresponding modalities if the rationale were identified and agreed upon by parties at the second ICNP. Overall questions raised were whether contributions should be voluntary or mandatory; whether they should come from private or public sectors; and whether they should be financial and/or non-financial. The main questions regarding the recipient-side discussed were: For what purpose monetary benefits shared through the mechanism may be used; who will select beneficiaries (governance of the mechanism); and what types of projects could be supported through the mechanism. An essential issue stated several times was the need for a mechanism that would not be relying on traditional public sources such as ODA.

Two lessons were drawn from other financial mechanism: The first one from the Funding Strategy of the FAO International Treaty for Plant Genetic Resources for Food and Agriculture, and the second one being from a broad spectrum of other financial mechanism in international law. Important perspectives the potential governance of the mechanism and the legal requirements for it to become part of international public law were explored.

One overall issue was highlighted: How genetic resource or their utilization outside bilateral ABS arrangements, often referred to as 'orphan' genetic resources at the meeting, could be encouraged and offered support to contribute to conservation and sustainable use of biological diversity. The spirit of the reflection meeting at Polhøgda was open. Even though no consensus emerged on any topics, there was a general sense of optimism regarding the potential for the forthcoming discussions on the needs of and modalities of a Mechanism. It was a general sense that continued wider discussions around resource mobilisation and innovative financial mechanisms would be very useful, which it is to be hoped, can be conducted in the same positive and constructive spirit that characterised the two days of deliberations in March.

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1 Introduction to this Report

During days in late March, the Fridtjof Nansen Institute hosted a first reflection meeting on the 'global multilateral benefit sharing mechanism' under the Nagoya Protocol (NP). The idea to have a reflection meeting on article 10 came directly from African countries who approached and requested the ABS Capacity Development Initiative for Africa, to cosponsor and co organise this first dialog about the need for and modalities for a Global Multilateral Benefit Sharing Mechanism GMBSM. The government of Norway, through the Ministry of Environment and Ministry of Foreign Affairs, contributed by providing financial assistance support the travel and accommodation costs of participants from developing countries. The Fridtjof Nansen Institute (FNI) provided facilitation, venue and practical arrangements. In all, almost 30 persons participated in their personal capacity in these informal pre-preliminary reflections of the matter. The discussions took place under the Chatham House rules. This report from the meeting summarizes the outcome of the deliberations and discussions without making specific references to participants. The aim is to capture, in a neutral manner, the key outcomes of the discussions and deliberations with a view to making these outcomes available to a larger audience, particularly to those who did not participate in the Polhøgda seminar.

One clear preliminary observation is that the discussions were rich and fruitful. The discussions were in no way meant to lead to any agreement or, pre-determine and pre-empt the official deliberations on this issue which are scheduled to take place during the second meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on ABS (ICNP-2) in 2012. As the aim was not to reach consensus, this report does not express any conclusive views on whether such a mechanism is needed or nor does it provide conclusive options on the modalities that could govern for such mechanism. It is emphasised that the number of question-marks increased during the deliberations and that the discussions where more explorative in nature.

This report seeks to be helpful towards supporting the early ratification of the Nagoya Protocol, by providing some reflections on the complexity and issues which might become interesting to take into account at the second ICNP rather than come up with any form of conclusions or recommendations.

2 Overall issues

2.1 The text of Art. 10: Its context and objective

Article 10 of the Nagoya Protocol was introduced at a rather late stage in the negotiations. The current text reads as follows:

ARTICLE 10

GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM

> Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilisation of genetic resources and traditional knowledge associated with genetic

> resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

The wording itself indicates clearly that nothing has been decided as to need and modalities for a global multilateral benefit-sharing mechanism. If parties to the Nagoya Protocol in the future identify needs for such a mechanism, how to design such a mechanism is also an open question. Article 10 was not subject to textual negotiations before the NP was adopted, and thus probably requires thorough exploration and discussion amongst the parties before anything can be agreed.

One open question concerning the time-perspective is whether the modalities of such a benefit-sharing mechanism (BsM) could employ a step-by-step approach, beginning with the identification of common ground of consensus for parts of a mechanism. A methodology of seeking common ground for developing the ideas of a global mechanism might prove helpful for countries when exploring a potential design for the mechanism. Such an exploratory approach might help to create a slow and consensus-building process. Parties might want to consider that a mechanism could be introduced stepwise. One could first agreeing upon and putting into function areas of common ground. While also identifying necessary elements of a future mechanism, but keeping any entity dynamic and open to later changes as one learns more about how the initial modalities will function. This approach could help to ensure flexibility and reflection being gradually built into the system, thereby avoiding the difficulties of crafting a fully-fledged readymade BsM at once. By making it exploratory, the potential for establishing consensus appears to be greater.

2.2 First topic: One view on history, background and context

Since the text of Article 10 was not subjected to textual negotiations prior to its adoption, the history and background for this Article was chosen to be taken up first in the exploration. It was noted that the text had not been drafted by any specific parties or regional groups, but had been crafted as part of the compromise text presented on the final day of the negotiations. As the initiative to the reflection meeting had been taken by African countries, a first view on the exploration of history and background for a GMB-SM was explored by an African.

In this first session some participants emphasised that initially the whole of the Convention on Biological Diversity (CBD) was meant to be a global mechanism for benefit sharing. They maintained that the ‘grand global bargain’ of the CBD linked conservation to commercial and other use of genetic resources based on the idea of using parts of the benefits arising from utilisation of genetic resources from another country. The intention behind this ‘grand global bargain’ was to create incentives to conservation through benefit-sharing mechanisms that would feed economic value of biodiversity back to those doing the conservation work on the ground level. One view on the background for Article 10 was that it is an element

that would reinforce the original idea and make this 'grand global bargain' operational. This vision was not shared by all participants.

Also a link between difficult questions in the negotiations and Article 10 as part of the solution to difficult issues was identified. According to some views at the reflection meeting, Article 10 should be seen in light of difficult issues in relations to: genetic resources where access to the biological material occurred prior to the entry into force of the CBD and/or the NP; benefit sharing for genetic resources in *ex situ* collection of unknown origin; evidence problems for GR accessed in areas beyond national jurisdiction; transboundary and publicly available traditional knowledge (TK) and benefit-sharing obligations for present and continued uses. It was also stated that Intellectual Property Rights (IPRs) may contribute to privatising global benefits. It was also said that there is a lack of linking and giving back to conservation when the IPRs, mainly patents, are based on genetic resources. The idea of a multilateral approach in order to create a link between the benefits arising from the utilisation of genetic resources and the conservation of biological diversity was also referred to as having a longer history. Some participants maintained that Art. 10 had integrated this idea into the Nagoya Protocol. The motivation of this integration was explained partly as a 'deal breaker'. It was stated that this was intended to take some hard issues out of the NP, leaving them open for future rounds of negotiations without any predetermined outcomes. For this report, it is important to emphasise that these views did not reflect a consensus among participant but should be seen as one take on the background and context in which Article 10 came into being.

2.3 Exploring GMB-SM: Fund or Mechanism

The wording of Article 10 itself gives rise to two core questions: *if* and *how*? The *if* was identified as the biggest question and is further explored in section 4 below. Building on the fact the need of any mechanism shall be discussed by the parties, discussions on the modalities, the *how*-question, need to be discussed in hypothetical terms: *If* a mechanism is to be established, then what should it be for? Under the assumption that there is no agreement on the *if*-question, the *how*-question was explored in a pre-preliminary manner.

Ideas about *how* a mechanism can be spelled out were highly divergent. There is a general need to hold discussions against the legal framework set out in the NP, with the wording of Article 10, and to understand the area and context in which this article eventually is going to be working.

One issue which came up early in the discussions and was kept warm is whether Article 10 refers to a fund or to a mechanism. Few participants saw it as a fund, and the bulk of the discussions took the direction of Article 10 as referring to a mechanism. It came up in these discussions that benefits can be monetary as well as non-monetary. It was emphasised that there is a need to separate between the Clearing House Mechanism (CHM) and the GMB-SM, in particular: How can a clear distinction between these two mechanisms be established, and each of them made distinct?

2.4 The Japanese Proposal

A topic which received quite some attention was the Japanese proposal. The work undertaken through the GEF utilising the Japanese funds made available as a trust fund for the early ratification, entry into force of the NP and 'implementation' was discussed. The link between the mechanism and the trust fund (established on March 17th 2011) by the Japanese and the GMB-SM was discussed. This fund was explained as not serving as a test for the Article 10 mechanism. Reference was also made to the GEF, which has already made available a million dollars (US$) for implementation of the NP.

3 Searching to identify the 'need for' a GMB-SM

The wording of Article 10 emphasises the need for reflection on the 'need for' a GMB-SM. Several possible needs were explored; each of these would probably require separate discussions of their corresponding modalities if specific rationales were identified and agreed by parties at the second ICNP. Also the importance of exploring needs and modalities in a reflexive manner was emphasised, as different *needs* are likely to require different *modalities* for a BsM. The wording of NP Article 10 refers 'to address the fair and equitable sharing of benefits derived from the utilisation of genetic resources and traditional knowledge associated with genetic resources' in two specific situations.

The fundamental *need* for a mechanism could be linked to the 'grand global bargain' of the CBD, as invoked by several participants, where obligations to take measures to conserve biological diversity should be financed also by a functional system for access and benefit sharing (ABS) as a financial mechanism. The idea was to create a concrete and measurable value to biological diversity and thereby provide incentives to its conservation. The view was however also made whether the Protocol was in itself a fulfilment of the 'great global bargain' As some participants noted that the commercial sector has so far provided few monetary benefits to conservation efforts, one need for a BsM could be identified as to play the role of incentive-creator for benefit sharing. One need was described as contributing to meeting the commitment to fair and equitable benefit sharing in CBD Articles 1 and 15. How this would be done is more than just a modality, which indicates that the needs for mechanisms are somewhat intertwined with the modalities for such a system.

It was brought up in the discussions that a mechanism might be relevant for utilisation of both *genetic resources* (GR) and *traditional knowledge associated with genetic resources* (TK-GR). NP Article 10 foresees two situations where a mechanism might be needed: 1) where the relevant resources (GR or TK-GR) 'occur in transboundary situations'; and 2) for these resources (GR or TK-GR) where 'it is not possible to grant or obtain prior informed consent'.

Standard regulation of access-utilisation through the use of PIC and MAT is troublesome or difficult to imagine in these two situations referred to in Art. 10 indicating the potential *need* for a mechanism, if deemed necessary by the Parties to the NP. Here it was noted that there is a need to

explore the *needs* for a mechanism in light of the difficult issues that were resolved during the negotiations of the protocol as a whole, but still deemed to necessitate a multilateral solution. It was also raised that Art. 10 was created to address situations outside the Protocol. Several more specific situations were explored to identify the needs for a mechanism:

3.1 Discussing the need for a mechanism in transboundary situations

Transboundary situation: Concern was expressed that it was difficult to conceive of a setting in which there would be a need for a mechanism for transboundary situations. Concern was also voiced that Article 10 might end up becoming a disincentive for collaboration among countries with sovereign rights to GR or TK-GR. One example was constructed as follows: Is the mere existence of the same species in both Africa and Asia sufficient to take that GR or TK-GR out of the bilateral/contractual system and deal with them at a multilateral level under the auspices of Article 10? Or should this rather be subject to the sovereign rights of each country in which the resources occur? There was concern about creating a mechanism under Article 10 which might undermine the sovereign rights according to the CBD. This worry was responded by the argument that even if it is possible to obtain such a given resource (GR or TK-GR) without a PIC due to a transboundary situation, the ethics of the ABS would require that benefits should be shared anyway in a fair and equitable way. It was held desirable by some that in transboundary situations countries should collaborate to resolve a fair and equitable benefit sharing, instead of seeking a solution through a multilateral BsM.

Another specific concern was that it could be difficult to define exactly what constitutes a transboundary situation. The example of such a difficulty went as follows: Often ‘access to genetic resources’ is understood as the point of time when the biological material is collected or crosses the border of the providing country. If then the ‘transboundary situation’ should refer to the act of ‘access’ to this biological material, that act of collecting cannot happen in more than one place at the same time. According to this view, it is illogical that one ‘genetic resources’ could be accessed in more than one country at the same time. In light of this, one could say that ‘transboundary access’ to a particular genetic resource can never happen.

As a counter-argument it was stated that ‘access’ is not necessarily the activity of collecting resources from the wild, but could rather be understood as the point in time when a certain GR or TK-GR is explored or used as covered by the scope of the CBD. Different providing countries were referred to as having implemented this understanding of ‘access’ in the definitions for their access legislation. In such cases, the transboundary element becomes clearer, as the genetic resource might occur under several jurisdictions. An alternative instance was identified where ‘access’ was defined in law as occurring at the time when material was collected for the purpose of R and D on its genetic or biochemical makeup. That approach addresses the temporal issue. Some expressed the view that this discussion is however linked to disagreement on temporal scope of the Protocol, as well as the understanding of the term ‘utilisation’ of genetic resources.

A further concern was expressed: which 'object' exactly should have a transboundary occurrence in order to fall within the scope? Many species occur under several jurisdictions at the same time, but at the cell or gene level there often are differences. Also there are differences at the allelic or mutation level being distinct for one country. This becomes a challenge for determining whether a given resource really is a transboundary GR or TK-GR. The answer might somewhat be linked to the previous issues raised.

Another distinction of viewing the transboundary situation was also offered by exploring a distinction between 'an *in situ* transboundary situation' and 'an *ex situ* transboundary situation'. The former can be described as one in which GR or TK-GR have developed their special characteristics and are still found across borders in natural circumstances. By contrast, an *ex situ* transboundary situation would be one in which GR or TK-GR are now found outside the habitats where they developed their essential characteristics in more than one country.

An example on an *ex situ* transboundary situation could be where GR or TK-GR are now held in a several collections in different countries. If 'transboundary situation' is understood to include the *ex situ* transboundary situation, then the question of benefit-sharing obligations connected to utilisation of previous collections of GR or TK-GR could be resolved. This is linked to the mechanism of Article 10 as a manner to address or resolve 'hard issues' in the negotiations leading to NP at a later stage, making possible a compromise in Nagoya. If access in an *ex situ* transboundary situation is subject to benefit sharing involving a global BsM, it was argued, one loophole in a bilateral ABS system could be closed. In the long term, this could create a stronger incentive for provider-country benefit sharing, if the mechanism becomes a fold-back situation requiring benefit sharing in situations where the resources are now found across borders. Differences of opinion among participants as to the scope of the Protocol appeared.

Benefit sharing to *ex situ* collections was discussed in several ways, including the classically difficult issues of collections. Whether and how these situations are really different is highly debated, with no clear consensus apparent. In this connection, administrative and financial problems of current collections were also explored. Commercially oriented collections were said to be doing well. Public and free collections, on the hand, were described as having a problematic funding situation. It was argued that if a mechanism could allow public collections to receive funding, the financial situation for these might improve and thus preserve a global common good in the long term.

3.2 Situations where genetic resources are accessed without PIC

The wording in Article 10 reads: 'for which it is not possible to grant or obtain prior informed consent'. One issue which gave rise to discussion was whether it is problematic for the functionality of ABS at large that there are genetic resources which are available without PIC and MAT requirements and without any benefit-sharing obligations involved. One core argument on this point was the reference to the discretion available

to countries to decide whether to require PIC, MAT and benefit sharing. This led some to conclude that under the system some genetic resources will necessarily be freely available. Some argued that this might create a 'race to the bottom', thereby creating perverse R&D incentives towards situations where GR are available for free, with potential damage to the system.

Regardless of this, several situations in which it would 'not [be] possible to grant or obtain' PIC were explored: One situation debated was where it is not possible to get PIC but where the origin is known. Some participants identified as covering various situations, including ones where samples were collected in areas beyond national jurisdiction.

Vigorous discussion arose in connection with situations where the biological material had been acquired before any ABS system was in place, but the genetic resources were first 'accessed' in the biological material at a later point. Whether this situation would be covered by Article 10 was a debated issue. Some held that this was a clear indication of the need for a mechanism for closing loopholes in the ABS, and that this was important from the overall perspective of making the 'grand global bargain' of CBD functional, so that a share of all benefits arising from utilisation of genetic resources can contribute to the conservation and sustainable use of biological diversity.

Another situation requiring a suitable mechanism was where the benefiting user of the genetic resources has obtained the material from an agent, and has no idea where the material has originated.

One way of looking at the mechanism was that it could be set up so as to help companies to do the right thing when it comes to benefit sharing; how it could serve as a tool to facilitate compliance with benefit-sharing standards without spending exorbitant sums on tracing origins. Here the concern for small companies was noted: should local users of genetic resources be expected to share benefits with a global BsM, or should they be encouraged to share a fair and equitable part of benefits arising with the local conservation of biological diversity? In such a situation the legitimacy of sharing with a global mechanism rather with locals would appear relatively lower and might seem bureaucratic. The challenge would be how the mechanism could increase the incentives for sharing also at the local level. Some discussants held that there is a general moral obligation to share a part of benefits; further, that it is difficult to get contributions from the private sector to conservation, and that the mechanism could help the private sector by enabling sharing into the mechanism. Careful thought must be given to how this can bring greater incentives for the private sector without *de facto* undermining the exercise of sovereign rights of countries. This line of reasoning was questioned by asking whether genetic resources should never be freely available and outside of the scope of the ABS. The argument here was again that the CBD and NP provide discretion for countries to leave GR free and openly available.

Particular attention was given to the situation for genetic resources outside national jurisdiction, not least marine bioprospecting as an emerging market. Tensions were identified between bioprospecting on the high

seas as against bioprospecting within the economic zones of countries. Leaving bioprospecting outside national jurisdiction freely available could create incentives for bioprospectors to avoid national waters, leading to an orientation towards to the high seas. That in turn might create a disincentive for the conservation of biological diversity in the seas.

This was countered with the reminder that genetic resources beyond national jurisdiction under the UN General Assembly/ UN Convention on Law of the Sea and in the Antarctica are dealt with in relevant for a. The Convention On The Conservation of Antarctic Marine Living Resources (CCAMLR) under the Antarctic Treaty System was mentioned as having a principle of benefit sharing, through the obligation to make research results available to all. The more detailed rules were not discussed, and one important observation was that this principle has not prevented patents from being taken out on inventions based on biological material that includes GR from Antarctica. In both situations, there was discussion about how the benefits arising from use in these areas can be distributed back to conservation.

A general question arising from the discussions here was how the BsM could be seen and discussed within the greater picture of achieving the goals of conservation and sustainable use of biological diversity. The overall issue to explore in connections with the need for such a system is how the mechanism can contribute to these objectives. The discussion indicated that still many questions related to ABS were seen unresolved. Some participants warned against reopening negotiations.

4 Trigger-points for benefit sharing

The next overall issue discussed was to develop further primary issue of modalities: the trigger-points for when benefits are to be shared into the mechanism. When embarking on discussion of the *how* question, there was under a clear understanding that no consensus had been established on the *if* question. It was also recognised that different elements in the rationale for the issue above might require different modalities. This being the case there is therefore no linear connection from the discussions in section 3 with the following sections.

Overarching questions raised were whether contributions should be voluntary or mandatory; whether they should come from private or public sectors; and whether they should be financial or non-financial.

4.1 Voluntary (weak) – mandatory (oppressive)

A first question explored was whether the BsM should stipulate voluntary or mandatory sharing of benefits. The wording of Article 10 is silent on this point, so it will incumbent on Parties to reflect on this in their consideration of modalities of the BsM. It was held that a voluntary mechanism could become a weak system, as users of relevant GR and TK-GR themselves would to some extent be left with discretion to share or not, and also as to the level of benefits to be shared. A mandatory system, it was opined, would meet the challenge of making such obligations binding upon private users of GR and TK-GR. There might be a lack of political willingness to impose such a requirement as mandatory. Between the completely voluntary and mandatory system, a half-way house was dis-

cussed, without any clear and detailed explanation as to its design. This remains a topic for further elaboration, as with all aspects of the mechanism.

If contributions are to be voluntary, the main challenge probably lies in how to establish incentives for private entities to share. Here the moral argument for contributing to conservation was discussed. If such a strategy is chosen, it will be important to communicate to the world that benefits have been shared on a voluntary basis. A core issue concerning the modalities of a voluntary system will be to explore the **incentives** for the private sector to share with the BsM.

If contributions shall be mandatory and legally binding, trigger-points for when the obligation becomes effective will have to be developed in a clear, specific and functional manner. If mandatory, the trigger-points will need to be developed and implemented in national law. In both situations, a clearer understanding of when GR and GR-TK have been utilised needs to be explored and applied to the two situations of transboundary and no-PIC situations.

4.2 Utilisation of GR and TK-GR

Utilisation of genetic resources for the purpose of the NP is defined in Article 2 c-e:

> Article 2 (c) 'Utilization of genetic resources' means to conduct research and development on the genetic and/or biochemical composition of genetic material, including through the application of biotechnology as defined in Article 2 of the Convention.
>
> (d) 'Biotechnology' as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.
>
> (e) 'Derivative' means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

For contributions to a mechanism to be mandatory, it is important to develop in further detail which utilisations should be covered more in detail. There is a link backwards from utilisation to either transboundary situations or to situations without PIC. At the point of time of utilisation, access either without PIC or from a transboundary situation has already happened. The main idea of the BsM might therefore be understood as to capture uses of resources which were not captured at the point of time of collection. This might lead to an understanding of utilisation of genetic resources into four categories by looking backwards in time:

1. Access has been done in accordance with PIC/MAT – the benefit-sharing question is solved;
2. Utilisation of genetic resources in the situation where their user can document that they are outside ABS, for any given reason;

3. The user has no PIC or no documentation of legal access – the material being outside ABS – and this might be one of two situations where utilisation of the GR triggers the BsM;
4. In situations where the genetic resources have been collected from one of the areas in a transboundary occurrence. This might be the second situation where utilisation of the GR triggers the BsM.

As no consensus was reached on these issues at the reflection meeting, these four categories were presented as mere suggestions and food for thought for later deliberations..

4.3 The situation 'occur in transboundary situation'

One core issue to explore is that of the significance of is occur in a 'transboundary situation'. This was held to be different for GR and for TK-GR. Several approaches were discussed; here some of the richness of the discussion will be illustrated. The overall concern centred on the relationship to the sovereign rights of countries to their genetic resources and any of rights to both GR and TK-GR according to national legal systems.

What is a 'transboundary situation'? Several options were brought forward and explored by the participants:

- Countries sharing the same ecosystem or sharing the same species;
- Migratory species;
- 'Outside national jurisdiction', the high seas and the deep seabed. Attention must be given to the work of other UN forum dealing with this topic;
- The Antarctica as a transboundary situation: The legal situation here is complex as there are claimant states, member states to the Antarctic Treaty and to the Antarctic Treaty – Protocol on Environmental Protection and observers to the system;
- Species which are migratory from the national jurisdiction to outside;

Is the mere occurrence of a species in two or more countries sufficient for the transboundary situation to be triggered?

The question of the geographical scope of the CBD and regulating activities occurring outside national jurisdiction was raised. On the other hand, it was held that the system in UNCLOS about flag-state jurisdiction regulates ships sailing the flag of each country, so all ships and activities on the high seas already fall under the sovereign rights of some countries, but – as others argued – not the genetic resources accessed by such ships. This also covers the activities of national research institutions beyond the limits of national jurisdiction. The question of the rational for benefit sharing under the current multilateral system was raised.

Two concerns regarding transboundary quoted in the section on 'needs' are also relevant here:

- *In situ* transboundary situations: the GR has developed its characteristics in different territories. This includes when more than one country is the country of origin of GR or TK-GR.
- *Ex situ* transboundary situations: developed characteristics *in situ* or in one country and moved to the jurisdiction of another. This includes the situation where one country or more is the country of origin and one country or more is the providing country. This is relevant where GR or TK-GR is in the possession of more than one country.

Exactly which of these situations would be covered by the 'transboundary situations' of Article 10 is a difficult question. The issue would however have to be resolved if the trigger-points for any contribution to the mechanism are to be made mandatory.

4.4 The situation where 'it is not possible to grant or obtain PIC'

In identifying situations where it is not possible to grant or obtain PIC, a major challenge can be expected in so far as defining the criteria, then to agree as to who needs to decide if they are fulfilled.

The term **'it is not possible to grant or obtain PIC'** is interesting. Linguistically, it can cover several different types of situations and degrees of situations:

- Absolutely not possible to grant or obtain PIC;
- Not practical to grant or obtain PIC;
- The degree and intensity of seeking PIC;
- Where PIC has not been granted for any reason;
- In situation where the biological material has been taken without any PIC and the exact origin cannot be traced;
- Where the origin is unknown;
- Where there are political difficulties involved in granting a PIC.

It was clear from the discussions that several of these alternatives would not be politically acceptable from the position of several countries. The list is referred here only to illustrate the richness in potential interpretative alternatives. The major difficulty with any of these options is to interpret and develop the term 'it is not possible to grant or obtain PIC' in a manner which does not challenge national sovereignty but is at the same time legally enforceable and functional.

The following question was raised and discussed: What if one country has a system which wants to grant PIC, but another country cannot grant PIC? A further question: Is the situation of possessing one biological compound without knowing the source covered?

The question of the need for end-points to the obligation to benefit share or how to establish the circumstances when the obligation is fulfilled was discussed as another topic for further exploration.

4.5 Which situations are actually covered by NP Art. 10?

Another difficult topic in the protocol negotiations concerned resources acquired prior to the NP: So when considering Art. 10 one should also consider to what extent they would be covered by a mechanism? The issue of retroactivity was discussed. To what extent should the collection or export of biological material be used as a temporal trigger-point? Also it was discussed whether it is in harmony with the moral obligations in the 'grand global bargain' of the CBD (that utilisation of GR shall contribute to conservation of biological diversity) that some uses of genetic resources do not contribute to conservation on long-term basis. Particular attention was paid to two specific situations:

- genetic resources acquired prior to the entry into force of the Protocol
- resources outside national jurisdiction.

There were no clear responses to these questions. The relation between the fund and origin was discussed, and three situations were identified: One situation involve directly paying back to the origin; a second situation is where there is payment into a trust-fund where funds can be distributed to conservation (etc.) measures; and thirdly, where individual countries can choose that benefits derived from their GR shall be fed back into the BsM. One observation was that the mechanism was an attempt to put on ice some of the difficult questions from the negotiations, so that they could be dealt with later, perhaps outside the legal construct of the Protocol but under the already existing obligations upon the Parties to the CBD.

5 Recipients of benefits from the GMB-SM

The main questions discussed here were: How monetary values shared to the mechanism may be used; who will decide on the beneficiaries (governance of the mechanism); and what types of projects could be supported under the mechanism. An essential issue stated several times was the need for a mechanism as something different from a new funding mechanism based on ODA.

Further issues to explore were how 'conservation of biological diversity' and 'sustainable use of its components globally' should be transferred into becoming applicable legal criteria. In this discussion it was held that the mechanism might have to break the link to the ecosystem where the GR was found. The mechanism could be seen as crucial for implementing the 'grand global bargain' of the CBD by making resources (economic and other types), available for conservation and promoting the sustainable use of genetic resources.

One procedural issue discussed was the need for independent scientific assessment of projects. In this context there was discussion of how to develop criteria for projects eligible to receive support from the mechanism and, in particular, concerning operative criteria for establishing when

a benefit sharing agreement is fair and equitable. It was suggested that the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and International Union for Conservation of Nature (IUCN) might provide lessons on how to establish such criteria for sharing from the mechanism. Earmarking of percentages back to certain measures for conserving biological diversity was discussed as a way of creating incentives in the situation of voluntary contribution. It might prove easier to achieve benefit sharing if a company can show concrete results for conservation based on its contributions. Capacity building on both the provider and user side was noted as a potential recipient of support from the mechanism.

An overall issue which was highlighted was that advantages must be visible for parties. The CBD recognises that countries have sovereign rights over their GR; thus when benefits go to the fund, it might to be distributed according to a percentage to different countries, or upon application to the fund.

The GMB-SM was held not to be an alternative to the PIC/MAT open to the discretion of the user of GR or TK-GR. This, it was noted, is not going to replace the ASB legislation, but be complementary. This merely involves seeking to capture something which would otherwise not be captured by the regular system on ABS. In this context it was held that most (90%) benefit sharing will still go directly from the user to the provider. It is important not to replace the bilateral approach, but be complementary. Primarily, the user of genetic resources should be available to provide information regarding from where GR is collected. The NP deals with bilateral contracts; the GMB-SM will deal with particular situations. One issue which was raised was how the mechanism could be used to create an incentive to enter into PIC/MAT with countries.

Several potential priorities were discussed as to identifying recipients from the mechanism. Should groups of countries have a particularly advantageous position? should the emphasis be on *in situ* or on *ex situ* conservation?

It was also noted that countries should have the possibility to designate that the benefits from the utilisation of its genetic resources goes to the mechanism. This could be an alternative to the ‘unless otherwise determined’ clause as regards requiring PIC and MAT. Some countries might take an ‘open access’ approach to their exercise their sovereign rights and impose only one condition: that utilisation of their genetic resources be shared in a predetermined manner with the mechanism. This triggered a discussion on whether the mechanism should be open to such contributions from countries.

6 Learning from other Global Mechanisms

The first lesson was to be drawn from the Funding Strategy of the FAO International Treaty for Plant Genetic Resources for Food and Agriculture, as this funding mechanism is an important tool under the ITPGRFA. The main system is embedded in Article 19f, according to which certain uses of PGR are to trigger sharing with the Fund, as when the material

received from the Multilateral System is under IPR which restricts the further exchange of the material.

> ITPGRFA Art 13.2 d (ii):
>
> '[…] commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System, shall pay to the mechanism referred to in Article 19.3f, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercializes shall be encouraged to make such payment.'

This obligation mostly targets when patents are used to establish exclusive rights to biodiversity-related inventions. The trigger-point for mandatory sharing lies in the future. It was, however, argued that the trigger-points should not be too long into the future.

This funding strategy is kept open for contributions from different sources, including all parties, developed countries following a conservation objective, and from the private sector using PGR from the MLS.

A discussion concerned the time-lag before one can expect any mandatory sharing. This is partly because of how the criteria for mandatory payments into the Fund are triggered, as it takes time to develop a commercial product which will narrow down the use of PGR for further exchange. Expectations as to future contributions can be stipulated from assessments of previously developed new varieties based on assessment on the time that breeding takes before a new plant variety can be commercially available on the market. In an interim period the Fund receives voluntary contributions: one example here is Norway, which provides 0.1% of the total sales of seeds per year (equivalent to USD 100,000 a year). Information and awareness-raising important: there are strategies for creating awareness and doing fund-raising. Discussion is underway amongst large actors in the seed sector concerning a flat percentage to the fund instead of assessing the payment on a case-by-case basis; as yet no agreement has been reached. A related topic was that not necessarily all contributions must be mandatory: semi-voluntary and voluntary contributions could also be made.

The eligibility criteria for applying for funding from the Fund and its priorities were described as follows: projects should take place in developing countries only; they should have conservation objectives; and should assist small-holder farmers in developing countries, including in adapting to climate change. The first round of grants has been conducted; the second round is nearly finalised and almost ready to be granted (May 2011). In the call for proposals to the second round, 400 pre-proposals were submitted. More than 100 projects made it through the pre-screening process and were invited to submit full applications. Application forms are available on the web-side. The system was identified as a transparent one. Panels of experts from other regions are to assess the projects. The second round, however, was hindered due to certain technicalities. Applications have come from academics working on *ex situ* conservation projects, NGOs and, to a limited extent, small-holder farmers. It will take

some time for the system to become fully operational, but in the meantime the voluntary contributions will bring accumulated experience relevant also for future management, when larger monetary benefits are expected to flow into the system.

The second lesson was to learn from a compilation of other funding mechanisms. The overall impression was that there are only limited experiences to draw on, since international funds are mainly based on government contributions. The experiences with mandatory or voluntary contribution from the private sector are rather absent. The role of the donors in such a system was debated at the meeting, and it was indicated that there is a need to secure independence from the contributors to such a mechanism. Here, however, there was no consensus.

7 Identifying remaining questions which need to be discussed further: Including the orphan genetic resources into ABS

The second day of the meeting started with a look at the reflections from the previous day, and a lesson was drawn: participants were there because of a pending international challenge identified as how ABS under the CBD and the NP can deal with 'orphans' in the system. The term 'orphan' became a metaphorical way of identifying the problems to which a mechanism could be a solution. Some participants mentioned the basic need for a mechanism to contribute to an ABS system with no free-riders using genetic resources and failing to contribute to conservation of biological diversity and sustainable use. Their idea was to use Article 10 as a means to engage users and utilisation outside bilateral ABS arrangements in conservation of biological diversity. Others held that some orphans fall outside the global system and should not necessarily trigger any benefit-sharing obligations. Another issue raised was that often one product is based on a high number of genetic resources, which complicates bilateral ABS. Some discussants indicated that it might be fruitful to use the mechanism to solve such a question.

8 Governance of a Mechanism

Governance of the mechanism was an important topic in the discussions, and here it was emphasised that the system for governing the mechanism must be sustainable in a long-term perspective. The relationship between the mechanism and the CHM was emphasised in connection with a voluntary or a semi-voluntary mechanism. It was stated that it was important to consider the CHM and a mechanism in conjunction, and to be clear about the sharing of the works and tasks of them respectively. Several institutional affiliations for a mechanism were discussed, without any clear recommendations.

The following questions were identified as important:

- What should be the institutional set-up of a mechanism?
- How will it be administered?
- Where will it be housed?

- Its potential relationship with the Clearing House Mechanism of the Protocol
- The legal relation of the GMB to the NP: How would the GMB-SM come into force?

A need for a well-functioning system for accountancy was noted. Another question raised without any clear answer was how the mechanism can become a mechanism and a driver for the Green Economy. The purpose is to help develop income sources based on biodiversity. This includes the need for good advice from business, and ensuring that the BsM does not run counter to business. It was suggested to contribute to building up partnerships with small companies in developing countries into a sound economic situation on the ground, in order to bring the private sector into bio-economy closer to the local and ILCs in developing countries.

9 Legal issues regarding the establishment of a GMB-SM

One legal question raised by the organisers was to what extent a Mechanism would introduce **new obligations, including revision of existing obligations**, under the CBD or the NP and thus necessitate the establishment of a new legal instrument which might require a signatory and ratification process. Among the issues raised were whether participation in the mechanism could be regarded as a decision by a State to exempt from its standard requirements regarding PIC/MAT, how rights of ILCs are dealt with under the mechanism, how the it could be related to the Clearing House, the focus of the mechanism on one mode of benefit sharing – monetary benefits, and possible consequences of making use of it for future claims regarding benefit sharing.

Another question raised was whether a state which is not party to the NP could participate in the mechanism. This question is closely related to whether the creation of a mechanism will require a new signatory and ratification process. While a mechanism solely established under the NP would presumably only be open to parties to the NP, a mechanism established under the CBD could open up for broader participation. A mechanism that necessitates a signatory and ratification process could be open to all states, depending on the modalities chosen in the instrument establishing the mechanism, and participation would in such an option depend on States' active decision to join.

These are technical questions, but will become important since a new round of ratification will require time. In conclusion, the institutional linkage and modalities of a mechanism are essential factors for how it can be established. These are aspects that the ICNP and Parties need to consider in their deliberations.

10 A business look at GMB-SM: possibilities, requirements and obstacles

The discussion identified three examples of possible situations where the global BsM could be useful:

1. The company would have ABS agreements in place with country of origin and local communities working with one local group; then comes another group or the government of another country and accuses the company of biopiracy of their rights.
2. Cosmetic industry: with a high number of biological substances (say, 86 ingredients) it is difficult to identify all the groups with which PIC/MAT shall be agreed.
3. Company working with a plant, and there are different traditional uses of that plant in different areas in the country and in neighbouring countries.

The basic need for legal certainty was emphasised as a rationale on which business can agree. This raises a challenge for the forthcoming deliberations: how can a system be tailored so as to create legal certainty for the company adhering to such a system? A challenge here is to create a level playing field with other companies that are acting without recognising ABS.

The overall question is how a benefit-sharing mechanism can help. Practical questions were discussed, for example how to judge between individual companies working and sharing benefits with a small number of ILCs, or whether the system should give a better position for the companies that contribute to the mechanism. It was emphasised as important to create a system which would strengthen the positive incentives for business, eliminating the perverse incentives for companies trying to meet the benefit-sharing obligations of the CBD in a situation where very few countries have functional systems for ABS. One central task is to explore how to make a system that can create incentives for companies to become involved. Here it must be born in mind that ‘business’ takes place in a wide range of different realities, from large multinationals to small niche companies. How can a GMB-SM meet the needs of all the variety of companies?

11 An ILC look at the GMB-SM

Unfortunately, no representatives from the ILCs were able to attend. However, some observations were shared with the meeting per email: The main message contained therein war that the Mechanism needs to be established as a last resort, to come into play after all attempts have been made to seek PIC/MAT and to identify the provider. In this context it was emphasised that the Mechanism should be established as an additional tool rather than a loophole to agreements with indigenous and local communities.

12 Final discussion

One overall issue was highlighted at the meeting: Users and providers outside the bilateral ABS system could be encouraged to contribute to conservation and sustainable use. References were made to the importance of a mechanism creating both moral value and economic values.

Discussions also centred on finding a 'pump' for creating a Mechanism, and that perhaps one should aim to start by taking a few small steps in the right direction. One approach could be to search for areas of agreement amongst states to build on. A useful strategy might be to seek to identify small steps of convergence where the ground is cleared for establishing a first attempt to resolve these benefit-sharing challenges, and then later build on such small-step experiences in establishing a more consistent, broader system. The question is how the CBD membership can develop such first steps. It was suggested that the Mechanism should tap into a new policy, by discussing how the Green Economy can link in with the business strategy.

There was emphasis on the need to explore and identify common ground for resource mobilisation for conservation of biological diversity. It was questioned to what extent the wording of Article 10 is a useful tool for implementing a new incentive. Also a need for a mechanism to ensure that benefits will trickle down to the actual users and those who are to take care of biological diversity was suggested.

It was emphasised that there are some things a government can do; and there are things that require changes in legislation. This needs to be explored also in the perspective of to what extent a new ratification process is need.

The spirit of the reflection meeting at Polhøgda was open. Even though no consensus emerged on any topics, there was a general sense of optimism regarding the potential for the forthcoming discussions on the needs of and modalities of a Mechanism. It was a general sense that continued wider discussions around resource mobilisation and innovative financial mechanisms would be very useful, which it is to be hoped, can be conducted in the same positive and constructive spirit that characterised the two days of deliberations in March.

Appendix 1: List of participants

Dr. Marco **d'Alessandro**, Scientific Officer, Waste, Substances, and Biotechnology Division, Federal Office for the Environment, Switzerland.

Mr. Geoffrey **Burton**, Adjunct Senior Fellow, Institute of Advanced Studies, United Nations University (Australia)

Dr. Fernando **Casas-Castañeda**, Co-chair Ad Hoc Open-ended Intergovernmental Committee, ABS Nagoya Protocol, CBD (Colombia)

Dr. Gemedo **Dalle Tussie**, Director, Genetic Resources Transfer and Regulation Directorate, Institute of Biodiversity Conservation, Ethiopia

Mr. Samuel **Diemé**, ABS National Focal Point, Ministère de l'Environnement et de la Protection de la Nature, Senegal

Dr. Andreas **Drews**, Manager, ABS Capacity Development Initiative for Africa (Germany)

Ms. Grethe Helene **Evjen**, Senior Adviser, Ministry of Agriculture and Food, Norway

Mr. Mohammad Fayazuddin **Farooqui**, Additional Secretary Ministry of Environment and Forests / Chairman, National Biodiversity Authority, India

Dr. Christian **Glass**, Desk Officer, Environment and Sustainable Resource Management, Federal Ministry for Economic Cooperation and Development (BMZ), Germany

Ms. Bente **Herstad**, Director, Department for Private Sector Development and the Environment, Norwegian Agency for Development Cooperation (NORAD), Norway

Ms. Birthe **Ivars**, Deputy Director General, Ministry of the Environment, Norway

Mr. Suhel **al-Janabi**, Co-Manager, ABS Capacity Development Initiative for Africa (Germany)

Mr. Søren Mark **Jensen**, Project Leader, Nature Agency, Ministry of the Environment, Denmark

Ms. Anca **Leroy**, Lawyer, International and European Division, Ministry of ecology, transport, sustainable development and housing, France

Ms. Maria Julia **Oliva**, Senior Adviser on Access and Benefit Sharing, Union for Ethical BioTrade (UEBT), Switzerland

Dr. Balakrishna **Pisupati**, Chief, Biodiversity, Land Law and Governance Programme, UNEP

Mr. Pierre **du Plessis**, Senior Consultant, CRIAA SA-DC, Namibia

Mr. Klemens **Riha**, Advisor, Federal Ministry for Economic Cooperation and Development (BMZ), Germany

Dr. G. Kristin **Rosendal**, Research Professor, Fridtjof Nansen Institute, Norway

Mr. Olivier **Rukundo**, Legal Consultant, ABS Capacity Development Initiative for Africa

Mr. Hugo Maria **Schally**, Head of Unit, Multilateral Environmental Agreements, Processes and Trade Issues, Directorate-General for the Environment, EU Commission

Mr. Peter Johan **Schei**, Director, Fridtjof Nansen Institute, Norway

Mr. Sem T. **Shikongo**, Doctoral Student, University of Bonn (Namibia)

Mr. José Luis **Sutera**, Counsellor, General Directorate of Environmental Affairs, Ministry of Foreign Affairs, International Trade and Worship, Argentina

Ms. Elsebeth **Tarp**, Senior Technical Advisor, DANIDA, Ministry of Foreign Affairs, Denmark

Mr. Ricardo Antonio **Torres Carrasco**, Advisor to the Minister of Agriculture, Colombia

Mr. Morten Walløe **Tvedt**, Senior Research Fellow, Fridtjof Nansen Institute, Norway

Appendix 2: Program

THURSDAY 24 MARCH

08:20 Departure by foot from the hotel lobby (accompanied by FNI representative)

08:30 Arrival at FNI. Coffee and registration

09:00 Welcome and practicalities

Welcoming addresses by Andreas Drews and Peter Johan Schei

Chairs for the reflection meeting: *Sem Shikongo* and *Peter Johan Schei*

09:30 **Introduction by the drafters of the text of Art 10: context and objective.**
Presentation by Pierre du Plessis
Round of preliminary thoughts regarding NP Article 10 and its further development: Questions and clarifications.

10:45 **What are the 'needs for' a GMB-SM?**
What are the concerns for a GMB-SH?
Methods: 10 min with the side-companion – then round around the table.

11:15 Coffee

11:30 **Trigger points for when benefits shall be shared**
Presentation by Morten Walløe Tvedt

What are the procedures for making contributions to the mechanism from private and public sectors, i.e. benefit-sharing, voluntary contributions, financial and non-financial from the Fund under the Multilateral System of the IT-PGRFA contributions to the mechanism?

'Utilization of GR and TK associated with GR':
a) 'occur in transboundary situation' and
b) 'it is not possible to grant or obtain PIC'

Tentative issues to explore:

- What is a 'transboundary situation'?
- Identifying situations where it is not possible to grant or obtain PIC

Challenge: first to define the criteria, then to agree on who to decide if they are fulfilled.

12:15 **Which situations are actually covered by the GMB-SM?**
Presentation by Birthe Ivars
Special situations:
- genetic resources acquired prior to the entry into force of the Protocol and
- resources outside national jurisdiction

How shall these situations be solved for the GMB-SM?

13:00 Lunch

13:45-15:15 Visit to the Viking ship museum close to Polhøgda.

15:15 Discussion of trigger points and situations covered by the GMB-SM.

15:45 **Recipients of benefits from the GMB-SM**
How may the funds in the mechanism be used, who will decide on the beneficiaries (governance of the mechanism)?
What are the types of projects that could be supported under the mechanism?
How to ensure that we do not only create a new organization based on ODA?
Tentative issues to explore:
- 'conservation of biological diversity'
- 'sustainable use of its components globally'
- when is a GR or TK being used for the purpose of triggering the obligation?
- end-points for the obligation; or incidents when the obligation is fulfilled?

17:00 Coffee

17:15 **Learning from others funds**
Introduction of examples of other funds relevant as to learn:

What can be learned from the financial mechanism under the FAO International Treaty for Plant Genetic Resources for Food and Agriculture: *Presentation by Grethe Helene Evjen*

What can be learned from other funds?
Presentation by Christian Glass.

18:45 Summing up day 1

19:00 Tapas dinner at Polhøgda – short introduction to Fridtjof Nansen and Polhøgda

FRIDAY 25 MARCH

09:00 Setting the scene for the day and identifying the outstanding questions which need to be discussed further.

09:15 Governance of the Fund
Topic for discussion would be the following:

- Who will administer the Fund
- What should be the institutional set up of the fund
- How will it be administered
- Where will it be housed
- It's potential relationship with the Clearing House Mechanism of the Protocol.
- The legal relation of the GMB-SM to the NP. How would the GMB-SM come into force?

Method for the following sessions: shot presentation and then time for reflection and discussion.

10:30 **A business-look on GMB-SM:** possibilities, requirements and obstacles
Presentation by Maria Julia Oliva

11:00 Coffee

11:30 **An ILC-look at the GMB-SM**
Presentation of ILC input from Preston D. Hardison, by Olivier Rukundo

12:00 GMB-SM as an incentive to enter into PIC and MAT versus the GMB-SM as undermining national sovereign rights over GR

12:30 Lunch

13:30 Presentation of options identified during day I and the morning
Presentation by Morten Walløe Tvedt

13:45 Procedural way forward: what can be done before the second meeting of the ICNP
Presentation by Sem Shikongo

14:15 Final discussion

16:00 End of reflection meeting

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