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**Conference of the Parties to the Basel Convention  
on the Control of Transboundary Movements of  
Hazardous Wastes and Their Disposal**

Eighth meeting

Nairobi, 27 November–1 December 2006

Item 6 (h) of the provisional agenda\*

**Implementation of the decisions adopted by the Conference  
of the Parties at its seventh meeting: Resource mobilization  
and sustainable financing**

**Examination of Article 14 of the Basel Convention, with  
a view to determining the legal and institutional feasibility  
of appropriate and predictable financial mechanisms of the  
Basel Convention**

**Note by the Secretariat**

1. Decision VII/40 requests the Open-ended Working Group to examine article 14 of the Basel Convention, by taking into account the range of options provided under the study made on resource mobilization, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention; and it requested the Open-ended Working Group to report its findings to the eighth meeting of the Conference of the Parties.
2. The present study is based on the decisions taken by the Open-ended Working Group regarding the implementation of the Strategic Plan and other programme matters, and includes comments made by the fourth and fifth sessions of the Open-ended Working Group on the study as well as any other relevant developments.
3. The purpose of the study is to provide Parties with information and background on potential sustainable funding mechanisms for activities and projects undertaken to implement the provisions of the Basel Convention. The study describes a set of financial mechanisms, reviews the instruments based on a criteria for evaluating predictable financial mechanisms. It concludes with a set of short-term, medium-term and long-term options.

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\* UNEP/CHW.8/1.

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## 1.0 Introduction

1. The Basel Convention Parties have been examining resource mobilization options in a concerted manner since 2004. These efforts began with the preparation by the Danish Environmental Protection Agency of *Financial Resource Mobilisation for Implementation of the Strategic Plan for the Basel Convention* consisting of a Guidance Paper and fact sheets on possible sources of funding for waste management. Following the completion of the study, and based on the direction of the Extended Bureau, the Secretariat of the Basel Convention (SBC) provided the Conference of the Parties (COP) during its seventh meeting, held 25-29 October 2004, with an overarching paper on “Mobilizing resources for a cleaner future: implementing the Basel Convention” (UNEP/CHW.7/INF/8), which constitutes a proposed resource mobilization strategy for the Basel Convention (RMS).

2. Discussions at the seventh Conference of the Parties on financing in decision VII/40 revealed an emphasis on assessing prospects for improving the appropriateness and predictability of *multilateral financial mechanisms* in support of Basel Convention implementation. This subject was explicitly not included in the original terms of reference for development of the proposed Basel Convention RMS. In accordance with the emphasis of decision VII/40, this study adds this consideration to the options provided by the Danish study and in the proposed Basel Convention RMS. The mandate for this study is decision VII/40 on Sustainable Financing adopted by the COP at its seventh meeting (See Annex 1). In decision VII/40, the COP “requests the Open-ended Working Group to examine article 14 of the Basel Convention, by taking into account the various options provided under the study made on resource mobilization, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention”.

3. The Plan of Action developed in the proposed Basel Convention RMS advocates a multi-faceted approach for mobilizing resources and cooperation in support of Basel Convention implementation. Multi-faceted actions will be critical to improving financial support for the Convention regardless of whether or not agreement is ultimately reached between donor and recipient countries, or with financial institutions or mechanisms, to establish more *appropriate and predictable multilateral financial mechanisms* in support of Basel Convention implementation.

### 1.1 Scope of this study

4. The reference to *appropriate funding mechanisms of a voluntary nature* in Article 14 of the Basel Convention, which is cited in decision VII/40, suggests that the original intent of the Parties was to apply voluntary mechanisms to funding Basel Convention regional and coordinating centres. Article 14(1) states,

*The Parties agree that, according to the specific needs of different regions and subregions, regional or subregional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.*

5. While Article 14 in this regard is circumscribed, the instruction within decision VII/40 suggests an examination of multilateral financial mechanisms of a voluntary nature which are broadly applicable to the Basel Convention in its entirety, taking into account the options proposed in the RMS (*i.e. with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention*). To this end, the scope of this study includes an examination of potential options for appropriate and predictable multilateral financial mechanisms that are applicable to implementation of the Basel Convention as a whole, including the Basel Convention regional and coordinating centres.

6. The justification for this scope is further substantiated by the *Legal examination and interpretation of Article 14* contained in Annex 2, which substantively concludes:

- Decision VII/40 seeks an examination of Article 14, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention. The analysis of Article 14, paragraph 1, indicates that its scope is limited to providing appropriate and predictable financing mechanisms for the regional and subregional centres.

- However, Article 15, paragraph 3, of the Convention mandates the Conference of the Parties to agree upon and adopt “financial rules to determine in particular the financial participation of the Parties under this Convention”. The Parties could choose to apply a wide interpretation to “financial participation of the Parties under” the Convention, reading it as not being limited to the contribution of the Parties to meet the costs of the Secretariat, but extending to any costs that may arise under the Convention. By this interpretation, the Parties are vested with the authority to agree upon rules for any type of financial participation of Parties under the Convention.
- Furthermore, it is clear that the existing Trust Funds of the Basel Convention were not established by reference to Article 15, paragraph 3, of the Convention but, rather, were established by reference to the activity or entity for which such funding was required, in this case, the discharge by the Secretariat of its functions.
- As such, there appears to be nothing to prevent the Conference of the Parties from establishing further funding mechanisms if they should determine that these are required for the purposes of, and activities under, the Convention. Thus, it is not necessary to limit the authority of the Conference of the Parties to establishing funding mechanisms for lasting and sustainable financing to that prescribed by Article 14. Rather, such funding mechanisms can be justified, in the context of the Convention, by reference to the object and purposes of the Convention as enumerated therein.
- Furthermore, it is to be noted that, Article 15, paragraph 5, provides:
 

“5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

(c) Consider and undertake *any additional action* that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11” [emphasis added].
- The preambular paragraphs of decision VII/40 indicate that the need for appropriate and predictable financial mechanisms is based upon the experience gained to date in the operation of the Convention, particularly the experience of developing countries. The Conference of the Parties may choose, therefore, to take “additional action” to establish appropriate and predictable financial mechanisms of the Convention, with a view to promoting the achievement of the purposes of the Convention, including enabling developing countries to implement adequately the provisions of the Convention.

7. This study also adopts a broad interpretation of the term “voluntary” on the basis that all contributions are made on the basis of collective or individual decisions of Parties (i.e., are not enforced by formally prescribed punitive measures such as with tax evasion under national tax systems, or by removal of participation and voting rights in some international fora). Based on this interpretation, “voluntary” is applicable to contributions made in the context of negotiated formulas that provide guidance for minimum contribution amounts as proportional to a donor nation’s economy, size, etc. (i.e. scales of assessment), and to non-negotiated contributions as provided by a donor for general funds or ear-marked purposes.

## 1.2 Structure of this study

8. This study has three substantive sections:
- Section 2** provides a framework for analyzing multilateral financial mechanisms;
- Section 3** applies the framework to select multilateral financial mechanisms; and
- Section 4** provides options for consideration of Basel Convention Parties regarding appropriate and predictable financial mechanisms of the Basel Convention.

## 2.0 Framework for analysis

### 2.1 The legal and institutional framework of the Basel Convention

9. As noted above, decision VII/40 requests the Open-ended Working Group to examine Article 14 of the Basel Convention, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention. As a first step, it is necessary to identify, in the context of the Basel Convention, the activities and purposes for which such financial mechanisms are required, having regard to the legislative authority contained in the Convention itself, as well as supplementary legislative mandates to be found in decisions adopted by the Conference of the Parties. The identification of such mandates will permit the proper assessment of the suitability and feasibility of various financial mechanisms for the Basel Convention.

### 2.2 Legal framework for activities undertaken for the Basel Convention

#### 2.2.1 Core operational activities for implementing the Convention

10. The Basel Convention seeks to protect human health and the environment against the adverse effects that may result from the generation and management of hazardous and other wastes. In meeting these objectives, the Conference of the Parties under Article 15 of the Convention, has the responsibility, *inter alia*, to “keep under continuous review and evaluation the effective implementation” of the Convention and to “promote the harmonization of appropriate policies, strategies and measures” to that effect. The Secretariat’s functions in meeting this objective, as set out in Article 16 of the Convention, include:

- To arrange for and service meetings of the Parties;
- To prepare and transmit reports on various types of information received from Parties as well as intergovernmental and non-governmental organizations;
- To prepare reports on its activities carried out in implementation of its functions under the Convention;
- To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its function;
- To communicate with focal points and competent authorities;
- To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;
- To receive and convey information from and to Parties on: sources of technical assistance and training; available technical and scientific know-how; sources of advice and expertise; and availability of resources;
- To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field;
- To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;
- To co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and
- To perform such other functions relevant to the purposes of the Convention as may be determined by the Conference of the Parties.

11. Financial resources are required, firstly, to meet the day-to-day operational costs of the Secretariat (personnel, rent of office space, etc.) to enable it to discharge such functions and, secondly, to meet costs associated with the convening of the meetings of the Conference of the Parties and its subsidiary bodies and the conduct of related functions, *inter alia*, meeting costs, translation, reporting

and communication costs. At the present time, the financial resources for these activities are mostly derived from the Basel Convention Trust Fund, with the major exception of meeting participation costs, much of which are sourced from voluntary contributions as provided to the Basel Convention Technical Cooperation Trust Fund.

12. However, the core operational activities cannot be artificially disassociated with the other functions of the Secretariat, especially as described in paragraph 1(k) of Article 16 (the last bullet in the list above, which is discussed in more detail in subsection 2.2.2 below). This is of particular relevance in regard to the programme supporting activities of the Secretariat that are necessary to discharge its functions in accordance with the Convention and the decisions of the Conference of the Parties.

## 2.2.2 Required activities for the effective implementation of the Convention

13. There are two types of activities required for Convention implementation: 1) capacity building activities, and 2) activities undertaken as part of programmes as directed by the Parties to address specific issues in support of environmentally sound management of wastes.

### 2.2.2.1 Capacity-building activities

14. Inherently, the Convention's provisions pertaining to general obligations (Article 4) require each Party to establish a control system in the context of environmentally sound management as defined in Article 2 of the Treaty. Consequently, the capacity-building dimension of the implementation of the Convention cannot be disassociated from the establishment and functioning of the control system.

15. The preamble to the Convention takes account of the "limited capabilities of the developing countries to manage hazardous wastes and other wastes", and therefore recognizes, "the need to promote the transfer of technology or the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the Transfer of Environmental Protection Technology".<sup>1</sup>

16. An interpretation of the Convention in the light of its objectives indicates that capacity building activities — in particular as undertaken to assist developing countries and countries with economies in transition (CEITs) to achieve the objectives of the Convention — are an essential element for effective implementation of the Convention. The Conference of the Parties has specifically recognized the essential role of capacity building to achieve the goals of the Convention. For example, the seventh meeting of the COP, by its decision VII/8 on *Capacity-building for Implementation of the Strategic Plan*, acknowledged that, "capacity-building, information exchange, awareness-raising and education in all sectors of society are of paramount importance for achieving the aims of the Basel Convention". The Ministerial Statement made at the seventh meeting of the COP reflects this concept, by stating *inter alia*, that more efforts will be devoted to strengthening national capacities to segregate hazardous from non-hazardous wastes, strengthening and promoting active involvement of the Basel Convention regional and coordinating centres, and promoting the development of environmentally sound technologies and their transfer to developing countries.

17. Capacity-building activities under the Basel Convention should also be viewed in the context of an integrated approach to chemicals management. Decision 20/7.1 on international environmental governance adopted by the UNEP Governing Council noted, "there is support for enhancing collaboration among multilateral environmental agreement secretariats, in specific areas where common issues arise, such as current work among the chemicals and waste multilateral environmental agreement secretariats and including the interim secretariats."<sup>2</sup> Furthermore, the Governing Council in its Decision 22/4 IV on a Strategic Approach to International Chemicals Management noted, "the importance of coordination between the development of the strategic approach to international chemicals management and the work of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Vienna Convention for the Protection of

<sup>1</sup> Article 10(2) provides that Parties shall "co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field".

<sup>2</sup> IEG-Report § 27

the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer, with due regard to their respective mandates.”<sup>3</sup>

18. Article 14(1) of the Convention provides for the establishment of regional or sub-regional centres for training and technology transfers regarding the management of hazardous waste and other wastes and the minimization of their generation. It further provides that, “Parties shall decide on the establishment of appropriate funding mechanism of a voluntary nature”. Numerous decisions have been adopted by the Conference of the Parties have elaborated upon the role of the Centres in the implementation of capacity-building activities.<sup>4</sup>

19. With respect to the Secretariat, Article 16(k) provides that it is, “to perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties”. Such functions have been ascribed to the Secretariat by decisions of the Conference of the Parties, particularly with respect to capacity-building activities in furtherance of Convention implementation. Thus, for example, decision III/10 of the third meeting of the COP on the Evaluation of the Effectiveness of the Basel Convention requested, “the Secretariat of the Basel Convention to continue providing the necessary assistance to the Parties, in particular to developing countries and countries with economies in transition, in order to enable them to effectively fulfil their obligations under the Convention and hence ensure its effectiveness”. Furthermore, specific capacity-building activities to promote effective implementation of the Convention have been entrusted to the Secretariat.

For example:

- **Illegal traffic:** Decision II/4 of the second meeting of the Conference of the Parties requested the Secretariat to, “assist Parties in developing national legislation to deal with illegal traffic and hazardous wastes and other wastes”, and to, “assist Parties in capacity-building including the development of an appropriate infrastructure with a view to the prevention and penalization of illegal traffic in hazardous wastes and other wastes and to ensure the involvement of national authorities and focal points for the Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes”. Decision III/6 requested the Secretariat to, “organize training courses for customs officers, port authorities, judiciary personnel and police forces in cooperation with WCO, Interpol and other appropriate bodies, including UN regional commissions and secretariats of regional agreements dealing with similar aspects”. Following the adoption of the *Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes*, Decision VI/16 requested, “the secretariat, in collaboration with the Basel Convention regional and coordinating centres, to assist Parties, particularly developing countries, in implementing the *Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes* at the national level, including the development of national contingency plans”.
- **Training and seminars on implementation:** Decision V/6 on Training and Seminars related to the Basel Convention requested, “the Secretariat to continue developing training programmes, including curricula at the national level in collaboration with national authorities, and organizing national and regional training activities on the implementation of the Basel Convention in collaboration with UNEP and other international organizations, as appropriate within the framework for the regional/sub-regional centres for training and technology transfer presently being established under the Basel Convention”. It further requests the Secretariat, in collaboration with UNEP and others, actively to contribute to the implementation of the programme of activities of the regional centres by developing training materials, publications and other

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<sup>3</sup> It is further noted that both the Rotterdam Convention on Prior Informed Consent, and the Stockholm Convention on Persistent Organic Pollutants recognise that technical assistance in response to requests from developing country Parties and Parties with economies in transition is essential to the successful implementation of the Convention (See Article 12 of the Stockholm Convention on Persistent Organic Pollutants, and Article 16 of the Rotterdam Convention on Prior Informed Consent. See also, Article 13 of the Stockholm Convention provides for financial resources and mechanisms in which developed country Parties are obliged to assist developing country Parties and Parties with economies in transition, financially, to meet the obligations under the Convention). These Conventions recognise the role of the Secretariat in facilitating “assistance to the Parties, particularly developing country Parties and Parties with economies in transition, on request in the implementation of the Convention provisions” (See Article 20(2)(b) of the Stockholm Convention, and Article 19(2)(b) of the Rotterdam Convention).

<sup>4</sup> See, for example, the core activities of the Centres, as reflected in Appendix 1 of Decision VI/3.

supporting materials, by facilitating the development of local and regional activities and case studies, and by providing resource persons for training courses.

- **Prevention of accidents and emergency measures:** Decision V/32 decided that the Secretariat of the Basel Convention may, upon request, use the funds [donated pursuant to this decision] to assist a Party to the Convention, which is a developing country or a country with an economy in transition, in developing its capacity-building and transfer of technology, and in putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal and to reduce the generation of hazardous wastes.

20. The COP has called on the Secretariat to conduct numerous other capacity building activities, such as:

- implementing Agenda 21,<sup>5</sup>
- providing legal and technical assistance to Parties further to the implementation of the Convention<sup>6</sup> within their legislature,
- providing technical and legal assistance to Parties in their process of ratification or accession to the Protocol on Liability and Compensation,<sup>7</sup> and
- assisting Parties in meeting their reporting obligations through the organization of workshops.<sup>8</sup>

21. However, while recognizing the fundamental importance of capacity-building activities to effective implementation of the Convention, decisions of the Conference of the Parties have tended to provide that costs of such activities are to be met from voluntary contributions made to the Basel Convention Technical Cooperation Trust Fund. Since such contributions have been limited and often earmarked, the Secretariat has had to divert considerable time and effort from existing resources to promote capacity building activities and assisting the Centres, and both the Secretariat and the Centres have had to rely upon voluntary contributions in order to fulfil these mandates.

22. Thus, for example, decisions of the COP have often reiterated, “the importance for Parties to provide financial resources to the Technical Cooperation Trust Fund to assist developing countries and countries with economies in transition that are Parties to the Convention in implementing the Basel Convention and in managing hazardous wastes in an environmentally sound manner” and, to this end, has invited, “Parties, non-Parties, intergovernmental organizations, members of the industry and business sectors, and non-governmental organizations to provide financial resources or assistance in kind to assist countries in need of such assistance in the development of training activities and technology transfer for the environmentally sound management and control of hazardous wastes”.<sup>9</sup> For example:

- Decision IV/10 urged “Parties to contribute to the voluntary Technical Cooperation Trust Fund established under the Basel Convention with the aim to support the activities of developing countries and the Secretariat of the Basel Convention in developing training and capacity-building activities as well as awareness-raising activities”.
- Decision V/32 on enlargement of the Scope of the Technical Cooperation Trust Fund urged, “Parties to provide contributions to the Technical Cooperation Trust Fund to support the activities referred to in that decision, and decision VI/14 invited developing countries and countries with economies in transition which are Parties to the Basel Convention to submit to the Secretariat project proposals for development of capacity-building, transfer of technology, and putting in place measures to prevent accidents and damage to the environment caused by transboundary movements of hazardous wastes

<sup>5</sup> Decision I/23 of the first meeting of the Conference of the Parties, as reiterated and developed by decisions II/21 of the second meeting of the Conference of the Parties, and III/21 of the third meeting of the Conference of the Parties.

<sup>6</sup> Decision I/12 of the first meeting of the Conference of the Parties, and decision III/10 of the third meeting of the Conference of the Parties.

<sup>7</sup> Decision VI/5 of the sixth meeting of the Conference of the Parties.

<sup>8</sup> Decision VII/35 of the seventh meeting of the Conference of the Parties

<sup>9</sup> Decision V/7 of the fifth meeting of the Conference of the Parties. See also Decision VI/11 of the sixth meeting of the Conference of the Parties.

and other wastes and their disposal, including for development of emergency response and contingency plans.

- Furthermore, with regard to the Basel Convention regional and coordinating centres, decision IV/4 urged “all Parties and non-Parties in a position to do so, as well as international organizations, including development banks, non-governmental organizations and the private sector, including industry, to make financial or in-kind contributions to allow all centres to become operational as soon as possible and to support their activities”, and, furthermore, it urged, “the Parties to have as a goal the long-term sustainability of the centres and to ensure that various options are being considered in order to achieve this goal”.

#### 2.2.2.2 *Specific programmes or activities called for by the COP*

23. Examples of supporting activities undertaken by the Secretariat as part of programmatic activities that Parties have directed to be developed and implemented in support of environmentally sound management include:

- Development of technical guidelines and other documentation by the Secretariat (see, for example, decisions I/19, II/16, V/15, V/25);
- Development of project concepts by the Secretariat for implementation by Parties in collaboration with the Centres in the priority areas of electronic wastes, used lead-acid batteries, used oils, obsolete stocks of pesticides, PCBs, dioxins and furans, by-products from the dismantling of ships, biomedical and health-care wastes, and partnerships with municipalities (Decision VII/3 on the Basel Convention Partnership Programme);
- Identification and development of one or several pilot projects on collection schemes in areas and regions in need of such projects further to the Mobile Phone Partnership Initiative<sup>10</sup>;
- Development and implementation of activities specifically focussing on Small Island Developing States in close cooperation with the United Nations Department of Economic and Social Affairs and other relevant stakeholders, including Basel Convention regional and coordinating centres (Decision VII/5);
- Development of concerted approaches for the further implementation of the Environment Initiative of the New Partnership for Africa’s Development as it relates to hazardous wastes and other wastes (Decision VII/6); and
- Work on the issue of ship dismantling (see, for example, Decisions VII/25, VII/26 and VII/27).

24. The Conference of the Parties has normally determined that the costs for implementation of such specific programmes or activities should be met from voluntary contributions. Nevertheless, the Secretariat is required to devote a substantial portion of its time and resources to these activities (e.g., the development of technical guidelines) in order to compensate for the lack of adequate contributions. In addition, Secretariat time devoted to searching and securing voluntary contributions to carry out programme activities should be considered. It should be noted that often time and effort is spent to follow up on potential pledges and try to secure funding that is then at a later time not provided. In previous years, the COP has invited, “Parties, other States and potential donors to contribute financially, technically or in kind to the implementation of specific project activities, the conduct of which has been requested by the Parties.”<sup>11</sup>

<sup>10</sup> Decision VII/4 of the seventh meeting of the Conference of the Parties, requested such projects to be carried out using funds provided by mobile phone working group participants, however the same decision also invited “Parties, signatories, members of industry and international governmental and non-governmental organizations to make financial and in-kind contributions for the implementations of pilot projects on collection and treatment schemes and for the publication of final reports of the mobile phone working group, including the overall guidance document”.

<sup>11</sup> Decision V/7 of the fifth meeting of the Conference of the Parties. Refer also decision VI/11 of the sixth meeting of the Conference of the Parties.

## 2.3 Institutional framework of the Basel Convention

25. In order to assess the functionality and suitability of the possible funding mechanisms described below, it is necessary to first examine the institutional structure of the Basel Convention.

26. **Conference of the Parties (COP):** The COP, as the governing body of the Convention, has both a decision-making and a supervisory role. Its mandate in this regard includes keeping under review and evaluating the effective implementation of the Convention, harmonizing policies, establishing subsidiary bodies, and undertaking additional actions. The UN and its specialized agencies, as well as any States not party to the Convention, are invited to participate as observers at meetings of the COP. Any other body or agency, whether international or national, governmental or non-governmental, qualified in the matter of hazardous wastes or other wastes may participate as observers unless one-third of the Parties object. Meetings of the COP are held every other year.

27. **Secretariat:** The Secretariat performs an administrative (operational) function as described above in Section 2.2.1 and also has an extensive implementation function, primarily as a response to Article 16(k) requests by the COP. Requests could include, assisting Parties with development of legislation; capacity building, including implementation of infrastructure, conducting technical training seminars and assisting with development of course curricula, assistance with capacity-building and transfer of technology, and in putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal. (These functions are described previously under section 2.2).

### Subsidiary Bodies:

28. Subsidiary bodies of the Convention, as established by the COP, include the Expanded Bureau, Open-ended Working Group (OEWG), and the Compliance Committee. In addition, the Basel Convention regional and coordinating centres have been established by COP decisions in accordance with Article 14 of the Convention.

29. **Expanded Bureau:** As per the COP Decision VI/36 the Expanded Bureau is composed of 13 members: five members of the present Bureau; five members of the previous Bureau; the two Co-chairs of the Open-ended Working Group; and the Chair of the Committee administering the mechanism for promoting implementation and compliance with the Basel Convention, having due regard to the principle of equitable geographic representation. The mandate of the Expanded Bureau as set out in Decision VI/36, is, (1) to provide administrative and general operational directions to the Secretariat between meetings of the COP; (2) to provide guidance and advice to the Secretariat on the preparation of agendas and other requirements for the organization of meetings, and on any other matters brought to it by the Secretariat in the exercise of its functions; (3) to perform functions requested by the COP or the OEWG, especially administrative tasks, taking into account the approved budget; and, (4) to report to the COP on the activities it has carried out between the meetings of the latter. Under COP Decision VII/41 the Expanded Bureau is further requested to “keep under review the financial information provided by the Secretariat”.

30. **Open-Ended Working Group (OEWG):** The OEWG, established for scientific and technical purposes, has been operational since 2003. Its mandate as per COP 6 Decision IV/36 is largely supervisory in nature and includes assisting the COP in developing and keeping under continuous review the implementation of the Convention's work plan, specific operational policies, and decisions taken by the COP for the implementation of the Convention, as specified in Article 15. The OEWG is further mandated to consider and advise the COP on issues relating to policy, technical, scientific, legal, institutional, administration, finance, budgetary, and other aspects of the implementation of the Convention within the approved budget, including identification of the specific needs of different regions and sub regions for training and technology transfer, and to consider ways and means of ensuring the establishment and functioning of the Basel Convention regional and coordinating centres; to prepare its work plan for consideration by the COP; and to report to the COP on the activities it has carried out between meetings of the COP. The OEWG is composed of the representatives of all interested parties, and is also open to observers. The OEWG meets up to three times between meetings of the COP.

31. **Compliance Committee:** This committee was established to administer the Convention's compliance mechanism.<sup>12</sup> It consists of 15 Members nominated by the Parties, and who have expertise

<sup>12</sup> See <http://www.basel.int/legalmatters/compcommittee/termsref.doc>.

relating to the subject matter of the Convention in areas including scientific, technical, socio-economic, and/or legal fields. The Committee elects its officers – a Chair, three Vice-chairs and a Rapporteur – based on equitable geographical representation of the five regional groups of the United Nations.

32. **Basel Convention regional and coordinating centres:** Article 14 provides for establishment of regional centres for training and technology transfer. To date, 14 centres have been established in Argentina, China, Egypt, El Salvador, Indonesia, Nigeria, Iran, Senegal, Slovak Republic, Russian Federation, South Pacific Regional Program (SPREP), South Africa, Trinidad & Tobago and Uruguay, of which eight have finalized legal framework agreements. China, Nigeria and Uruguay are coordinating centres for their respective regions. The Centres play an important implementation role. In particular, they are the principal regional delivery mechanism for capacity building implementation activities of the Convention, and play a pivotal role in assisting countries with their own decentralization of training and technology transfer associated with the environmentally sound management of hazardous and other wastes. Core capacity building functions include training; identifying, developing and strengthening mechanisms for the transfer of technology in the field of environmentally sound management of hazardous wastes or their minimization; and disseminating information on and encouraging best approaches, practices and methodologies for environmentally sound management and minimization of the generation of hazardous wastes and other wastes (e.g., through case studies and pilot projects).

33. Some of the centres have built up expertise on a particular priority or key waste and or waste streams, such as PCBs, obsolete pesticide stocks, used lead-acid batteries, and electrical and electronic wastes, that are of particular importance to the Parties within the region they serve. The Centres have a very important resource mobilization role in cooperating in the mobilization of human, financial and material means in order to meet urgent needs at the request of the Party(ies) of the region faced with incidents or accidents which cannot be solved within the means of the individual Party(ies) concerned, inclusive of assisting Party(ies) to prepare proposals that attract financing and with outreach to donors. The Centres are also tasked with developing, within the general financial strategy approved by the Parties, their own respective strategies for financial sustainability.<sup>13</sup>

34. It is important to emphasize that to date, financial sustainability has been a struggle for most BCRCs. The more successful BCRCs are those that have been able to attract multi-year donor support. Given that a key requirement for strengthening capacity building programmes and operations under the Convention is to enable the BCRCs to fulfill their functions and operate effectively, appropriate and predictable financial mechanisms for the Convention must include those that can assist in supporting the Convention centers.

## 2.4 Assessing the predictability and sustainability of multilateral financial mechanisms

35. This section describes criteria that can be taken into account when examining the suitability of different types of multilateral financial mechanisms for the Basel Convention.<sup>14</sup> There are two sets of criteria set out in this section, one for assessing the general characteristics of multilateral financial mechanisms, and one for assessing the suitability of multilateral financial mechanisms for the specific circumstances of the Basel Convention. The first set of criteria addressed the general characteristics of the financial mechanisms, while the second set of criteria address how these mechanisms would work for the specific characteristics of the Basel Convention to determine their legal and institutional feasibility in this context.

### 2.4.1 Criteria for assessing the characteristics of multilateral financial mechanisms

36. The following criteria can be used to assess the characteristics of multilateral financial mechanisms:

#### A. *Adequacy*

- *Are amount(s) of resources typically dedicated to the mechanism adequate to the scale of the mechanism's mandate?*

This is a qualitative assessment and not statistically exact, as it is often possible to identify needs for additional money. The key point is whether the relationship

<sup>13</sup> See <http://www.basel.int/centers/regdescr.html>.

<sup>14</sup> For a glossary of the different fund types referred to in this document, please consult Annex 4.

between the mechanism's mandate (i.e. all that it is expected to do) and the size of its resources is reasonable as compared to other examples of financial mechanisms.

**B. Sustainability and predictability**

- *Does the mechanism or mechanism type have a record of sustainable and predictable funding over time?*

This would be typical of a financial mechanism that has a clear and broadly supported mandate, a broad donor base, a contribution approach that donors support, relatively long fund replenishment periods, a highly developed institutional framework, and transaction processes and costs that are understandable, manageable, and proportional to the mechanism's mandate and typical size of transactions.

**C. Equity**

- *Is access to the fund reasonably equitable for recipient countries?*

This is a measure of fairness such that the rules of the mechanism do not have the effect of unreasonably limiting access to the mechanism for one group of countries as opposed to another group due to implicit or explicit barriers in the mechanism's rules or in the application of the rules.

**D. Accountability**

- *Is the fund accountable to donors and recipients?*

This would be typical of a mechanism that is directed by, or takes guidance from, and reports out on a regular basis to a body or bodies that have adequate representation from donor and recipient countries (for instance, guidance from the Conference of the Parties, and/or decisions of a governing board with broad representation). The mechanism would also have provision for regular, independent, and public evaluations. A project audit regime would also be present with clear rules for when and how audits of project resources will be completed.

**E. Transparency**

- *Are the operations of the fund transparent, especially with regard to such factors as eligibility criteria, decision-making processes, and administration, e.g., points at which critical decisions are taken on project approvals, rationale for approval, and rejection of project proposals, etc.?*

**2.4.2 Criteria for assessing the suitability of multilateral financial mechanisms for the circumstances of the Basel Convention**

37. The following criteria can be used for assessing the applicability of multilateral financial mechanisms to the circumstances of the Basel Convention.

**F. Compatibility of mandate**

- *Are the activities of the fund reasonably compatible with the Basel Convention in terms of environment and sustainable development subject matter, geographical scope of the fund, and membership? Is it feasible to implement from a legal point of view? Is it feasible from an institutional standpoint?*

**G. Compatibility in governance**

- *Can the governance of the fund reasonably accommodate input from the Basel Convention COP (the primary governance body of the Basel Convention), including regular COP guidance to the fund? Would COP decisions determine the fund scope or would fund scope be determined by the COP in conjunction with other (competing) governance bodies, by donors, etc.? Would fund administration be minimized relative to the Basel Convention bodies? Are there provisions to ensure transparency relative to governance?*

## H. *Political feasibility*

- *Is it reasonable to assume that the mechanism will attract adequate and sustainable political support? Political support can be a crucial element when determining if a mechanism would be acceptable and if it would attract sufficient support and at the correct political level(s).*

### 3.0 Assessment of multilateral financial mechanisms

38. To facilitate discussion by the Parties, this section of the paper selects for assessment multilateral financial mechanisms that could be *enhanced, emulated, or adopted* to contribute to more *appropriate and predictable multilateral financial mechanisms* in support of Basel Convention implementation:

- The Basel Convention Trust Fund -- a general-purpose trust fund negotiated by Parties to the Convention, using a scale of assessments;
- The Basel Trust Fund to Assist Developing Countries and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention (the Technical Cooperation Trust fund) -- a specialized trust fund that is donor driven;
- The Africa Stockpiles Program (ASP) at the World Bank -- a program specific trust fund that is partnership based;
- Specialized trust funds that are donor based and which have synergies with the Basel Convention;
- The Multilateral Fund for the Implementation of the Montreal Protocol (MLF) – a dedicated multilateral financial mechanism with the fund size negotiated by all Parties to the Convention and using a scale of assessments; and
- The Global Environment Facility (GEF) – a multi-purpose multilateral financial mechanism with a fund size negotiated by donors and using a scale of assessments.

### 3.1 Current Basel Convention trust funds

39. The Basel Convention is currently served by two Convention trust funds: the *Basel Convention Trust Fund*, and the *Technical Cooperation Trust Fund*. These funds were created in 1992, when the first meeting of the Conference of the Parties adopted decision I/7, inviting the Secretary-General of the United Nations to establish the two trust funds: one to cover the ordinary expenditures of the Secretariat, and the other a technical cooperation trust fund to provide technical assistance to developing countries and other countries in need of technical assistance in the implementation of the Convention. The trust funds were established in accordance with the financial regulations and rules of the United Nations, and the general procedures governing the operations of the UNEP Environment Fund.

40. The Basel Convention COP makes decisions on the terms of reference with regard to the scope of the trust funds.<sup>15</sup> Similarly, it determines the budget for the funds, although the Bureau of the Parties may, on the advice of the Convention Secretariat's Executive Secretary, approve expenditure over and above COP approved levels for specific budget lines providing there is no overall increase in the budget above that approved by the Parties.

41. The trust funds are reviewed and extended on a biennium basis (two consecutive calendar years) by the COP and, subsequently, as approved by the UNEP Governing Council. Most recently, at seventh Conference of the Parties, the Conference decided that the trust funds would be further continued until 31 December 2008. Accordingly, the COP requested the Executive Director UNEP to extend the two trust funds to the Basel Convention for this period, subject to the approval of the UNEP Governing Council (GC). The UNEP GC in its Decision 23/4 on administrative and other budgetary matters at its 23<sup>rd</sup> session of February 2005 extended the two trust funds through 31 December 2007, pending receipt of a request from the Basel Convention COP by the Executive Director.

42. Contributions not immediately required for the purpose of both Funds are invested at the discretion of the United Nations and any interest so earned is credited back to the Funds. The Executive

<sup>15</sup> See Annex 5 for the Terms of Reference for each of the trust funds.

Director deducts from the income of both Trust Funds an administrative support charge equal to 13% of expenditures recorded during any accounting period in order to meet the cost of administrative activities financed from both Trust Funds and to provide services relating to, for example, personnel, accounting, and auditing. (The rationale for the 13% is set so not to detract from administrative costs applicable to its own Environment Fund). At the end of each calendar year of a financial period, the Executive Director submits to the Parties the certified accounts for the year and a report of activities under the Convention. The Executive Secretary is also authorized to shift up to 20% of one main appropriation line to other main appropriation lines as per decision VII/41.

43. Neither of the funds currently makes provision for appropriate and predictable financial support relative to operational expenditures of the Basel Convention regional and coordinating centres.

44. The funds and decisions pertaining to them are also referred to in “*Mobilizing resources for a cleaner future: implementing the Basel Convention*”.

### 3.1.1 The Basel Convention Trust Fund

45. The Basel Convention Trust Fund was negotiated on the basis of a burden-sharing formula derived by consensus. It is used to support operational and programmatic activities. Experience indicates that contributions often fail to match budget requirements relative to responsibilities assigned to the Secretariat by the Conference of the Parties through Article 16 functions or through its decisions.

46. The purpose of the Basel Convention Trust Fund, *a general purpose trust fund negotiated by Parties to the Convention and using a scale of assessments*, is to provide financial support for the ordinary expenditures of the Secretariat of the Basel Convention, including staffing and administrative office costs and overhead, support for Secretariat preparation and translation of materials, and attendance at meetings of the COP and its subsidiary bodies. Costs of report preparation and transmission, as per Article 16 (b), and some other core operational functions, such as project development resources relative to staff and consultancies as required to prepare concepts and proposal outlines, and to monitor and steer partnership/resource mobilization programmes of the Convention, are not currently addressed within the budget or explicitly described within the Terms of Reference for the fund. COP VII approved USD 4,286,090 for the fund in 2005 and USD 4,404,740 for 2006, as per Decision VII/41, increasing the budget for 2005-2006 from the previous year by 9.5% and 15.8%, respectively.<sup>16</sup> Contributions of the individual Parties (in accordance with the COP decision) are based on the UN General Assembly scale of assessments for apportionment of the expenses of the United Nations, with modifications,<sup>17</sup> which enhances predictability with regard to contributions. All 116 Parties present<sup>18</sup> accepted a commitment to contribute to the trust fund. More than 100 of the 166 Parties to the Convention (as of 15 November 2005) are developing nations.

#### 3.1.1.1 Assessing the Basel Convention Trust Fund

47. This section provides an assessment, using the criteria found in Section 2.4, of the Basel Convention Trust Fund as a mechanism for appropriate and predictable funding for the Basel Convention.

48. If the political will to do so exists, the Basel Convention Trust Fund could be used by Parties to enhance the predictability and sustainability of financial resources in support of Basel Convention implementation activities. The adequacy of the fund is the subject of negotiations among the Parties.

49. Whether the Trust Fund is *adequate* relative to the purpose of the fund and priorities for funding depends on, (1) whether the *scope*, and *budgeted activities relative to the scope*, embrace the full range of core operational expenditures of the Secretariat and, potentially as applicable to the operational costs of the Basel Convention regional and coordinating centres; (2) whether assessed contributions to the fund are appropriate relative to the budgeted activities; and, (3) whether contributions received (as distinguished from assessments) meet the budget expectations. Countries that do not contribute to the fund within their means can undercut the legitimacy of the fund, including the willingness of other Parties to consider doing more with it. As the fund currently stands, it does *not* cover the full operational and related costs of the Secretariat’s work (e.g., reporting, project development assistance and partnership/resource mobilization monitoring and related operational costs). Nor, as noted above, is it applicable to the operational costs of the Basel Convention regional

<sup>16</sup> UNEP/CHW.7/33 (see UNEP, 2005d).

<sup>17</sup> Any future adjustments are to be determined by consensus of the Parties.

<sup>18</sup> As of 5 April 2005, there are 165 Parties to the Convention.

and coordinating centres. Were the scope clarified relative to these issues, funding would need to be increased accordingly to be considered *adequate*.

50. A negotiated approach with a scale of assessments enhances the fund's level of *sustainability/predictability*. Where the scale of assessments is adjusted to ability to pay, there can be greater comfort among donors. Some discretionary ability of the administrator to shift a portion of funds from one line item to another within the approved budget and/or roll unused funds forward to the next fiscal year within a budget cycle improves flexibility in the administration of the fund and can improve responsiveness.

51. Where developed (non-recipient) and developing (recipient) nations have an equal opportunity to determine the general trust fund's purpose and priorities, and guidelines for fund eligibility and approval, there is high levels of *equity* associated with the fund.

52. These funds typically have high levels of *accountability* and *transparency* with respect to the total scale of contributions and periodic reporting to the COP as a whole.

### 3.1.2 Basel Convention Technical Cooperation Trust Fund

53. The Basel Convention Trust Fund to Assist Developing Countries and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention is an entirely voluntary fund. Analysis of the fund, and comparative funds under other legal mechanisms, show that this type of fund is highly unpredictable with respect to the resource base received from one funding cycle to the next. Donor-driven contributions usually carry earmarking or theme-based restrictions that affect the discretion and flexibility in the use of funds to implement Convention priorities. Technical assistance activities supported by the fund have been few in number and limited to modest pilot efforts where donor-designated uses happen to match country-driven requests.

54. The Technical Cooperation Trust Fund, a specialized trust fund that is donor driven, provides support for programme activities undertaken to implement the Basel Convention. In 2003, sixth Conference of the Parties, via decision VI/41, noting the increase in the number of Parties to the Convention, agreed there was a need for greater financial assistance, including for implementing the 2002 Strategic Plan. The Terms of Reference, provided in Appendix 1 to decision VI/41 notes:

*The scope of the Trust fund is to provide financial support in particular for:*

- (a) *Technical assistance, training and capacity-building;*
- (b) *Basel Convention regional and coordinating centres;*
- (c) *Appropriate participation of the representatives of developing countries Parties and of Parties with economies in transition;*
- (d) *Cases of emergency and compensation for damage resulting from incidences arising from transboundary movements of hazardous wastes and other wastes and their disposal<sup>19</sup>*

55. Commensurate with the broader scope of the trust fund, COP VII in its Decision VII/41 increased the total *notional* budget from USD 5,347,160 in 2004, to USD 17,868,398 for 2005, and USD 12,297,011 for 2006. The majority of funding is budgeted for Strategic Plan implementation projects, inclusive of USD 8,492,102 in 2005, and USD 3,930,179 in 2006. The budget includes project support for web access to national reporting databases (USD 70,000 over the two years), and partnership programme projects (USD 2 million for the two years). Additionally, USD 500,000 per year is budgeted in support of the Convention's interim financial mechanism for liability and compensation. An amount of USD 10,641,572 is budgeted for meetings and conferences of the COP, OEWG, and an annual partnership meeting. The remainder (USD 487,200) is for staffing.

56. Contributions to the fund are financed primarily by earmarked donor-driven contributions, whether by the Parties, non-Parties, intergovernmental and NGO organizations, and/or other sources. For the years 1999-2004, there were 99 individual donor contributions from 22 nations, the European Community and three private sector enterprises totalled USD 4.52 million, of which just USD 206,166 provided via 10 nations and the European Community was for non-earmarked activities. The majority

<sup>19</sup> In guidance developed for the Parties on use of the fund for emergencies and liability issues, Parties are encouraged to have emergency contingency plans in place, although this is not a requirement for access to funding for this purpose.

of funding in those years has been provided by six nations: the Governments of Denmark, Japan, Norway, Switzerland, the United Kingdom, and the United States.<sup>20</sup>

### 3.1.2.1 Assessing the Technical Trust Fund

57. This section provides an assessment, using the criteria found in Section 2.4, of the Technical Cooperation Trust Fund as a mechanism for appropriate and predictable funding for the Basel Convention.

58. Overall, there is a chronic shortage of funding relative to projected budget needs in any given year, which speaks to the limited *adequacy* of the voluntary fund. Because of the earmarked nature of the fund and the designated uses of such contributions, there has been only limited funding available to assist developing countries and countries with economies in transition to build their capacity for ESM of wastes despite the Convention's emphasis placed on implementation of ESM provisions, as applicable either on a national or regional basis. Similarly, there has been little support provided or available with respect to support for compliance with the Basel control system or as a basis to assist nations to comply with their national reporting obligations. The majority of funds contributed during the past four years are earmarked, as in the preceding years, and the majority of these funds have been contributed for developing nation participation in meetings, and also for other specific project purposes. Given that many countries have indicated that Basel Convention regional and coordinating centres are the preferred delivery approach to help them in preparation of proposals and in assisting them to mobilize resources for projects in support of Convention implementation, this fund has thus far proven largely inadequate owing to its inability to provide meaningful levels of assistance to the BCRCs (i.e., based on donor preferences in earmarking and the overall amounts committed in most years).

59. With regard to the sustainability and predictability of the fund, the Secretariat is constrained to identifying grant opportunities on an ad hoc basis that is driven more by the nature of earmarked contributions received than country-driven demand. Additionally, most earmarked contributions over the past four years being USD 20,000 or less. As a consequence of the number of earmarked contributions, the various conditions placed upon individual contributions and the average size of such contributions, considerable transaction costs are placed on the Secretariat with respect to management of the funds and to UNEP in administering them. Because most contributions (earmarked or non-earmarked that are applicable to environmentally sound management activities) have been relatively small, they have for the most part been used for modest pilot projects or as seed money for capacity building training.

60. The nature of the fund (including relative to the ratio of earmarked to non-earmarked funds) results in a "queue" of potential country projects awaiting arrival of funds that happen to match expressed need, which effectively limits access to the fund from an *equity* point of view.

61. Earmarked funding is, by its nature, difficult to predict, and the Secretariat finds it a challenge to "regularize" activities against transparency and accountability criteria. The ad hoc nature of the contributions and the various purposes they support can be out of sync with a strategic approach to support for Convention implementation and, because of the time expended in locating grant opportunities by the Secretariat, serves to reduce the Secretariat's capacity to focus on facilitating Parties' implementation of the Convention. Nonetheless, many countries have a preference to be able to provide earmarked funds. In such cases, consideration of the priorities set out by the parties and through the Strategic Plan should be taken into account.

## 3.2 Partnership-based programme specific trust funds

### 3.2.1 Partnership approach in the Basel Convention

62. The Basel Convention is beginning to accumulate valuable experience with partnership programs. The Convention formally initiated a Partnership Programme in 2003 at COP VI via decision VI/32 as an avenue for enhancing capacity of the Convention to assist developing countries. Through this effort, the Convention is seeking to recruit new contributors, with an emphasis on industry, to initiatives designed to improve life-cycle strategies for products that, while not hazardous as articles in

<sup>20</sup> Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Presented at the seventh meeting of the COP, Geneva, 25–29 October 2004. General distribution 25 January 2005. 2005. UNEP/CHW.7/33.

commerce, pose risks to humans and the environment at their end-of-life (waste) stage. The Programme is viewed as integral to a successful resource mobilization initiative.

63. Key elements of the Partnership Programme's 2004-2006 work plan include development of partnerships on mobile phones; used oils; electrical and electronic waste; greenhouse gases from landfills; biological and medical waste; used lead-acid batteries; ship dismantling; elimination of PCBs; dioxins and furans; and partnerships with municipalities for ESM of hazardous wastes in urban areas. Discussions are underway with potential partners with respect to these projects. The Secretariat to the Basel Convention is also a partner in the African Stockpiles Programme (discussed below), which is more advanced, as compared to the other initiatives. The Partnership Programme has thus far been contingent on voluntary contributions from three Parties and one private sector partner.

### **3.2.2 The Africa Stockpiles Programme**

64. The Africa Stockpiles Programme (ASP) has been designed to clear all obsolete pesticide stocks from Africa (an estimated 50,000 tonnes) in an environmentally sound manner over the next 10-15 years, and to put in place measures to prevent their recurrence. An initial first phase is estimated to cost USD 70 million, of which USD 46 million would be used to prepare programs and to clean up seven African countries (Ethiopia, Mali, Morocco, Nigeria, South Africa, Tanzania, and Tunisia), as well as prepare nine more countries for cleanup under the programme's first phase. Implementation of the first phase was scheduled to commence in 2005 (ASP, 2003).

65. The World Bank is the legal entity that manages the *Africa Stockpiles Programme Multi-Donor Trust Fund* on behalf of the partners. The World Bank, the World Wildlife Fund and the Food and Agriculture Organization (FAO) are leading the development of the ASP trust.<sup>21</sup> One of the ASP partners, the Global Environment Facility (GEF), has pledged USD 25 million in support of Phase 1 of the ASP. GEF funds were provided through the Persistent Organic Pollutants (POPs) focal area for which eligibility requires recipients to be a Member of the POPs (Stockholm). The World Bank, through its Development Grant Facility (DGF) has contributed USD 2.7 million for a 2-year period (2004/2006) to the ASP Trust Fund. These funds will be used to build capacity in African countries, in conjunction with NGOs and regional organizations, to facilitate the implementation of the ASP. The Development Grant Facility is structured to provide grant funding for global and regional development initiatives that are of high value for developing countries but cannot be supported adequately through regular country-based operations. In addition, bilateral funding was contributed to the ASP trust fund by the governments of Belgium, Canada, Denmark, European Community, Finland, France, Japan, Netherlands, Norway, Sweden, and Switzerland (World Bank, 2003a).

66. As of May 2005, pledges and contributions from donors, the GEF and the World Bank were expected to exceed USD 60 million.

### **3.2.3 Assessing the suitability of partnership-based programme specific trust funds**

67. This section provides an assessment, using the criteria found in Section 2.4, of the suitability of partnership-based programme specific trust fund as a mechanism for appropriate and predictable funding for the Basel Convention.

68. With the exception of the ASP partnership fund in which the Basel Convention is a partner, Basel Convention-initiated partnerships have yet to receive adequate financing, which might reflect the nascent nature of the programme. However, in this regard the ASP presents a useful model relative to its use of formalized program-specific trust funds that are partnership based. The Africa Stockpiles Program at the World Bank offers an example of a focused approach to funding targeted activities, often of a sectoral or regional nature. As a "niche" financial mechanism, this type of fund contributes expertise through the partnership and can add to the overall resource base available for Convention implementation assistance.

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<sup>21</sup> Other partners to the ASP include Non-Government Organizations (Pesticides Action Network (PAN)-UK and PAN-Africa); foundations (the Ford Foundation); United Nations (UN) specialized entities, (UN-Economic Commission for Africa, United Nations Environment Programme, United Nations Industrial Development Organization, the United Nations Economic Commission for Africa, the World Health Organization (WHO), the United Nations Institute for Training and Research; other international and regional organizations (the Secretariats of the Base1 Convention, the African Union (AU) and its member countries, the New Partnership for Africa's Development or NEPAD Secretariat); the European Union; various financial institutions (the GEF, the World Bank as noted above, and the African Development Bank); the private sector (CropLife International); and governments, which provide financing via their bilateral agencies.

69. A trust fund of this type could be established for the issue of management of end-of-life mobile phones and other end of life products such as electronic and electrical equipment or vehicles. Such an effort might require cooperation with an international financial institution that has experience in the management of larger funds with multiple donors, although it may also be managed as a UNEP fund. This could be one option for establishing financial mechanisms in support of the Convention and its activities.

70. *Adequacy* is determined through the programme design at the outset. For the ASP, for example, this was determined through a GEF PDF-B project proposal. The expectation with regard to eliminating the full 50,000 tonnes of pesticide stocks in Africa is dependent on a multi-staged approach, of which the USD 60 million pledged represents only the initial phase. As is typical of partnerships, however, there is no assurance the partners contributing to the initial phase will continue to make contributions to subsequent phases and, if so, in sufficient amounts as required for these phases. Hence, while the short-term *predictability* is an issue, longer-term *predictability* and *sustainability* is still more uncertain. The GEF's requirement that partners raise USD 45 million minimum before its USD 25 million pledge would be activated is typical of "matching fund" arrangements, and simultaneously encourages donations while adding to a level of unpredictability.

71. *Transparency* requirements can vary depending on the "ground rules" established for each undertaking or partnership programme. However, as with the ASP, these types of trust funds generally adhere to high levels of transparency. The Basel Convention to date has operated and reported out on its efforts to the COP and the public in a very transparent manner. Private sector and NGO partners, as well as organizations that participate in such efforts (e.g., the GEF) typically publicize their efforts through their respective organizations as well.

72. A further downside to this type of fund is that it may foster and re-enforce programme specific alliances that may create considerable uncertainty at the outset. Such uncertainty can be compounded by unpredictability as to whether the contributions would collectively support initiatives under the Strategic Plan for Implementation of the Basel Convention. The importance of such funds should not be underestimated, yet they are generally viewed as an "add on", or "extra" to core funding of the Strategic Plan and the work programme.

73. The use of these kinds of trust funds, in partnership with an appropriate international financial institution, whether implemented within a region or globally, is entirely *compatible* with the Convention's mandate, having been initiated with input from the Parties and Secretariat. Based on the number of Basel Parties seeking access to assistance via a partnership initiative, the Basel Convention Parties might need to pursue a route similar to the ASP example so as to make the most of leveraging or co-financing opportunities with potential partners. However, in such partnership undertakings, the Basel Convention would need to clarify the value-added, and deliver on this commitment within the partnership. This would require a commitment of resources from the Basel Convention. *Governance* of the partnership will be shared, which means that the Basel Convention COP will not have sole direction over the trust.

74. *Equitable* access by recipient nations to funds is contingent primarily on programme design and the extent to which contributions match budgeted programme tasks.

### 3.3 Donor-driven specialized trust funds

#### 3.3.1 Examples of specialized trust funds

75. There are a number of donor programme-specific trust funds that support activities that have synergies with the Basel Convention. An example, is the International Bank for Reconstruction and Development (IBRD) Prototype Carbon Fund (PCF), with funding of USD180 million, which became operable on a pilot basis in 2000 and runs through 2012 (i.e. there is recognition that greenhouse gas mitigation activities, primarily those which capture methane gas from engineered landfills, have significant synergies with Basel Convention activities). The PCF invests contributions in developing country and CEITs projects designed to produce greenhouse gas emission reductions. The IBRD's Community Development Carbon Fund (CDCF) finances small-scale projects in the poorer areas of the developing world, such as in Least Developed Countries (LDCs). The Fund, a public/private initiative designed in cooperation with the International Emissions Trading Association and the UN Framework Convention on Climate Change, became operational in July 2003. The first tranche of the CDCF is capitalized at USD 128.6 million with nine governments and 15 corporations and organizations participating in it. The CDCF invests a minimum of 25% of its funds to buy emission reductions from

small-scale projects located in LDCs while building national CDM supportive systems. This fund is now closed to further subscriptions.

### 3.3.2 Assessing the suitability of programme specific donor driven trust funds

76. This section provides an assessment, using the criteria found in Section 2.4, of the suitability of programme specific donor driven trust fund as a mechanism for appropriate and predictable funding for the Basel Convention.

77. *Sustainability* of these funds is typically low: the fund has a life span and is then sunsetted. *Predictability* is low from the viewpoint of when and on what operational basis such funds will be created and with respect to *adequacy of resources* once a fund is established. Often the funds are undertaken on a pilot basis to test a funding approach. Donors may include bilateral aid agencies. *Accountability* is generally high, given that an international or regional bank often manages them. *Transparency* is variable depending upon the funds design characteristics. *Equity* is also variable, depending upon whether the fund is established for global access or on a regional basis and relative to the conditions for eligibility. For example, technical eligibility criteria can effectively limit options for countries seeking access for projects that do not conform to all the technical specifications of the fund.

78. Such a fund created external to the Convention will typically have limited application for the Basel Convention but may offer synergies to assist Parties with their implementation activities.

## 3.4 Dedicated multilateral fund—negotiated assessment

### 3.4.1 Overview of the Multilateral Fund of the Montreal Protocol

79. The Multilateral Fund for the Implementation of the Montreal Protocol (MLF) is an example of a multilateral financial mechanism tailored to the implementation of a single MEA. It involves negotiated replenishment levels and application of a scale of assessment. Initially established in 1990 by the London Amendment as an Interim Multilateral Fund, the MLF became operational in 1991 and was made a permanent mechanism of the Protocol in January 1993. Its purpose is to assist eligible developing countries to finance agreed incremental costs of compliance activities undertaken to eliminate ozone-depleting substances (e.g., financial and technical cooperation, and technology transfer), consistent with the Protocol's requirement that developing countries reduce CFC consumption and production by 85% not later than 2007, and achieve complete CFC phase-out by 2010. The Fund is also used to finance clearinghouse activities and the Fund Secretariat operations and support costs.

80. The Fund seeks to achieve its objective primarily through financial assistance to developing country Parties whose annual per capita consumption and production of ozone depleting substances (ODS) is less than 0.3 kg, such that they can comply with the control measures of the Protocol. Currently, 129 of the 184 Parties to the Montreal Protocol meet these criteria (the so-called "Article 5" developing countries).

81. Contributions to the Multilateral Fund from the industrialized countries, or "non-Article 5" countries, are assessed according to the United Nations scale of assessment, with contributions from other Parties to be encouraged. Funds are provided on a grant or concessional basis based on an "Indicative List of Categories of Incremental Costs" developed by the Parties. Up to 20% of a donor's total contributions may be provided bilaterally in the form of projects approved by the fund's Executive Committee for implementation by a donor country.

82. The majority of grants and loans funding projects and activities are implemented by four agencies: the World Bank, UNEP, UNDP and UNIDO. UNEP serves as a trustee for the fund (the largest environmental fund it services) and is responsible for research, data gathering, and the information clearinghouse function. UNDP and UNIDO perform feasibility and pre-investment studies and provide technical assistance. The World Bank is responsible for investment projects.

83. The fund is replenished every three years with the budgetary needs of the Montreal Protocol determined by the Parties. Since its inception, the Fund has been replenished six times: USD 240 million (1991-1993), USD 455 million (1994-1996), USD 466 million (1997-1999), USD 440 million (2000-2002), USD 474 million (2003-2005) and USD 400.4 (2006-2008). The final implementation of all projects and meetings from the year 1990, will result in the phase-out of the consumption of more than 226,855 ODP tonnes and the production of about 156,342 ODP tonnes of ozone depleting substances. Project approvals since fund inception as of April 2006 have totalled about USD 1.984 billion. Contributions to the Fund have been received at a rate of 91% of pledged levels (UNEP, 2004).

### 3.4.2 Assessing the suitability of the Multilateral Fund model

84. This section provides an assessment, using the criteria found in Section 2.4, of the suitability of multilateral fund model as a mechanism for appropriate and predictable funding for the Basel Convention.

85. Unlike other MEAs, industrialized countries negotiated the Montreal Protocol, with developing countries encouraged to sign on later. Clearly, the developed nation negotiators in making non-Article 5 (developed) countries responsible for financing the Fund recognized its global environmental benefits. Hence, the developed nation contributors (as the original Parties), having set the terms of both the MEA and the fund, while not obligated legally to contribute, are nevertheless motivated to do so, which helps to ensure the *adequacy* of the fund.

86. At the same time, non-Article 5 countries recognized the need for “balance” with respect to acceptance to the Convention. This has been advanced through shared decision-making processes between developed and developing countries. As provided for in Article 10.7, the Parties decide upon the programme budget of the Fund for each fiscal period.

87. *Equity* is inherent in the structure of the 14-member Executive Committee that manages the fund, whose membership is represented by seven developed and seven developing countries. Based on Terms of Reference developed in 1992,<sup>22</sup> the Executive Committee operates where possible by consensus. Where consensus cannot be achieved, decisions require a two-thirds majority of the committee, with a voting majority that comprises at least four developing country and four industrialized country members (i.e., a “double majority” process). The Executive Committee, which meets three to four times a year, develops and monitors operational policies, budgets, guidelines and administrative arrangements; determines the allocation and disbursement of resources; the establishment of criteria for project eligibility; and the review of performance reports.

88. The Secretariat of the Multilateral Fund, in addition to performing a communications and liaison function, has oversight for operational expenditures (e.g., arranging for and servicing committee meetings), monitors activities of the implementing agencies, and provides reports, policy and financial papers for the consideration of the Executive Committee, in the interests of *accountability* and *transparency*. The Secretariat reporting function includes analysis of all projects and the Secretariat’s office and administration costs are borne by the Government of Canada, in addition to its assessed contribution, as part of a host country agreement.

89. The dynamics of donor contributions (i.e., terms set by the donors but with decisions about how contributions are allocated left to an Executive Committee in which developing and developed countries share equal power), promotes a *high degree of predictability* and *sustainability*. As well, the types of activities funded to achieve specific targets (i.e. specific reductions by specific dates) are themselves fairly circumscribed in nature, as opposed to an MEA with broader scope (e.g., prevention of desertification or ESM of wastes). Funding is therefore more concentrated and therefore *highly predictable relative to application* and more easily managed and administrated than a fund involving support for more diverse and numerous activities.

90. The MLF’s highly circumscribed purpose offers *only limited opportunities (compatibility of mandate)* in support of the Basel Convention with its much broader provisions and scope. *Compatibility of governance* (control by Basel Parties) would also be extremely difficult to contemplate on many levels if integration with the MLF was contemplated. It is also highly unlikely that *political* conditions would be present to establish such integration, or a separate similar fund dedicated to the Basel Convention. This study therefore does not see a dedicated multilateral fund in support of the Basel Convention for the foreseeable future, and, as such, this option is not discussed further.

91. While this is an ideal framework for a fund in terms of balance and control the Multilateral Fund for the Implementation of the Montreal Protocol is an example of a dedicated multilateral financial mechanism tailored to needs of a particular entity such as a multilateral environmental agreement, with funding provided on a negotiated basis and contributions allocated to priorities and activities as determined collectively by the fund membership. This is an ideal construction in terms of balance and control (predictability of the application of funds), scope of the Convention (hazardous and other wastes), and the distribution of funds (equity among developing nations as determined by the full membership). Despite the advantages of this fund type, the international donor community has

<sup>22</sup> See UNEP/OxL.Pro.4/15, annexes IX and X, 1992.

expressed strong opposition to creation of another dedicated environmental multilateral financial mechanism for reasons of avoiding the proliferation and fragmentation of financial mechanisms in the global environmental regime, which may not be sustainable.

### **3.5 Multi-purpose multilateral fund**

#### **3.5.1 Overview of the GEF**

92. The Global Environment Facility (GEF), established on a pilot basis in 1991 and made a permanent body in 1994 with the adoption of the *Instrument for the Establishment of the Restructured GEF* (amended in 2002), is the only multipurpose multilateral financial mechanism and the largest source of “dedicated” funding for international environmental agreements and decisions. Currently the GEF has 176 participating countries.

93. The Global Environment Facility (GEF) is the largest existing source of dedicated funding available to support the implementation of multilateral agreements and related programmes. According to the *Instrument for the Establishment of the Restructured Global Environment Facility* (the GEF Instrument), the primary objective of GEF is to provide new and additional grant and concession funding to meet incremental costs of measures necessary to achieve agreed global environmental benefits. In seeking to maximize global environmental benefits, GEF emphasizes its catalytic role, including by leveraging additional financial resources from the public and private sectors and catalyzing results by innovation, demonstration and replication. Sustainability and replication of interventions are cornerstones of GEF operations.

94. The GEF Instrument stipulates that in addressing targeted global environmental issues, it shall fund programs and projects that are country-driven and based on national priorities designed to support sustainable development and shall maintain sufficient flexibility to respond to changing circumstances in order to achieve its purposes. In addition, the 1995 GEF Operational Strategy<sup>23</sup> notes that global and interregional projects may be funded for eligible recipient countries or for other activities promoting the purposes of the Facility and that GEF activities will be designed to be consistent, where appropriate, with regional initiatives.

95. To date, financial support has been provided in six focal areas, each of which was created to support a particular multilateral environmental agreement or a cluster of agreements for which the GEF is a financial mechanism. The six focal areas and the multilateral environmental agreements they support are noted below, along with the funding allocations inclusive of the GEF-3 replenishment:

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<sup>23</sup> The Operational Strategy, adopted by the GEF Council in 1996, is a “road map” or framework for programmatic cohesiveness and integration among the entities that participate in GEF.

Table 1

Focal Area	Year of Inception to GEF Funding	UN Convention Supported (if applicable)	Grant Amount Allocated to Date up until 2004	Resources Mobilised through co-financing to Date	Projects Funded
Bio-diversity	1991	Convention on Biological Diversity (CBD)	\$1.89 billion	\$3.80 billion	-Arid and semi arid zones -Coastal, marine, and freshwater resources -Forests -Mountain regions
Climate Change	1991	UN Framework Convention on Climate Change (UNFCCC)	\$1.74 billion	\$9.29 billion	-Removing barriers to energy efficiency and energy conservation -Promoting the adoption of renewable energy by removing barriers and reducing implementation costs -Reducing long term costs of low greenhouse gas emitting energy technologies -Supporting the development of sustainable transport
International Water	1991	Various regional and international water agreements	\$767 million	\$2.11 billion	-Water bodies -Integrated land and water projects -Contaminants
Ozone Depletion	1991	Montreal Protocol of the Vienna Convention on Ozone Layer Depleting Substances	\$177 million	\$182 million	-Phasing out of use of chemical in Russian Fed. -Eastern Europe -Central Asia
Land Degradation	2002	UN Convention to Combat Desertification (UNCCD)	\$72 million	\$155 million	-Prevent and control land degradation
Persistent Organic Pollutants	2002	Stockholm	\$141 million	\$91 million	-Control management of POP's globally

Source Statistics derived from GEF website <http://thegef.org/projects/focal/areas/fisvsl>.

96. GEF could offer opportunities for Basel Convention implementation via its six focal areas related to the Rio Conventions or, in the case of international waters, through its operational strategy. Some of the focal areas have strong synergies with Basel Convention objectives, most notably persistent organic pollutant (POPs) wastes in the POPs focal area, solid wastes as they pertain to prevention, stabilization and reduction of greenhouse gases from waste management facilities in the climate change focal area, and environmentally sound management of wastes in the international waters focal area. Hence there is notable compatibility of mandate for many of the wastes addressed by the Convention.

97. There are three interrelated types of GEF programming<sup>24</sup>: operational programmes, enabling activities, and short-term response measures.

- An *Operational Programme (OP)* is “a conceptual and planning framework for the design, implementation, and coordination of a set of projects to achieve a global environmental objective in a particular focal area. It organizes the development of country-driven projects and ensures systematic coordination between the Implementing Agencies and other actors”.

<sup>24</sup> The description of programming is excerpted from UNEP/POPS/COP.1/INF/30.

- *Enabling activities*, as defined in the GEF Operational Strategy, fulfil essential communication requirements to a Convention, provide a basic and essential level of information to enable policy and strategic decisions to be made, or assist planning that identifies priority activities within a country.
- *Short-term response measures* are project opportunities that while not strictly related to an operational programme or enabling activities, are sufficiently important and timely to achieve short-term benefits applicable to a focal area at a limited cost.

98. Strategic Objectives are developed for each focal area by GEF Focal Area Interagency Task Forces.<sup>25</sup> They are used to sequence responses to Convention priorities to meet the evolving needs of the Conventions and programme for synergies across various conventions, to incorporate scientific and technical advice, fill portfolio gaps, incorporate lessons learned from execution of other projects, and to respond to national priorities.

99. Grants are provided for four types of projects:<sup>26</sup>

- *Enabling Activity* projects — up to USD 500 000, depending upon the Convention and pertinent focal area. Grants are processed via an expedited processing and approval procedure subject to CEO (as opposed to full Council) approval.
- *Full-sized projects (FSPs)* — greater than USD 1 million, subject to the GEF Project Cycle and approval by the GEF Council
- *Medium-sized projects (MSPs)* — up to USD 1 million. MSPs are processed in an expedited manner, including one-step approval by the GEF Chief Executive Officer after circulation to the Council
- *Small Grants Program (SGPs)* — up to USD 50 000 for community-level initiatives that contribute environmental benefits as related to the focal areas. Grants are made directly to community-based organizations and NGOs in developing countries and are approved by the SGP at the national level, which is administered by the UNDP.

### 3.5.2 GEF governance and institutional arrangements

100. Any member State of the United Nations or of any of its specialized agencies may become a participant in the GEF by depositing with the GEF Secretariat an instrument of participation. There are currently 176 members of the GEF.

#### GEF Assembly

101. The GEF Assembly, which consists of representatives from all participating countries, is responsible for reviewing general policies of the Facility and its performance. Additionally, as pursuant to paragraph 14(d) of the restructured GEF Instrument, the Assembly shall “consider, for approval by consensus, amendments to the present instrument on the basis of recommendations by the Council.”<sup>27</sup> The Assembly meets every three or four years.

#### GEF Council

102. The GEF Council is the main governing body of the GEF for issues related to operations. As such, it is responsible for:

- Developing, adopting, and evaluating the operational policies,
- Development and oversight programs for GEF activities,

<sup>25</sup> The Task Forces are comprised of staff from the Secretariat, the Implementation Agencies, and GEF Scientific and Technical Advisory Panel (STAP) members.

<sup>26</sup> Information drawn from the following GEF sources: *Operational Policies, Templates and Guidelines* (n.d.) at [http://thegef.org/Operational\\_Policies/Eligibility\\_Criteria/templates.html](http://thegef.org/Operational_Policies/Eligibility_Criteria/templates.html); *GEF Project Cycle: An Update*, 2003, GEF/C.22/Inf.9 at [http://thegef.org/Documents/Council\\_Documents/GEF\\_C22/Project\\_Cycle\\_Update\\_FINAL\\_Nov\\_5\\_2003.pdf](http://thegef.org/Documents/Council_Documents/GEF_C22/Project_Cycle_Update_FINAL_Nov_5_2003.pdf); *GEF Small Grants Programme website, Apply for an SGP Grant*, 2004, at <http://sgp.undp.org/index.cfm?module=ActiveWeb&page=WebPage&s+ApplyforanSGPGrant>.

<sup>27</sup> All decisions as per paragraph 25(b) of the restructured GEF Instrument are taken by consensus. Both the Instrument and the 2000 *Rules of Procedure for the GEF Assembly* are silent on decision-making procedure in the event consensus cannot be reached.

- Directing the utilization of GEF funds,
- Reviewing the availability of resources from the GEF Trust Fund, and
- Cooperating with the Trustee to mobilize financial resources.

103. The Council develops a work programme for implementation of GEF activities and monitors and evaluates progress in the implementation of the work program. It also acts as the focal point for the purpose of relations with the Conference of Parties to the conventions for which the GEF is a financial mechanism. These relations may include, but are not limited to consideration, approval, and review of the arrangements or agreements with such Conferences; receipt of guidance and recommendations from them; and compliance with requirements under these arrangements or agreements for reporting to them. It also provides guidance to the GEF Secretariat, GEF Implementing Agencies and other GEF bodies.

104. The Council is comprised of representatives from 32 regional constituencies: 16 state representatives from developing country constituencies, 14 state representatives from developed country constituencies, and 2 state representatives from the countries with economies in transition. The 16 constituencies from developing countries are distributed as follows: 6 for Africa, 6 for Asia and the Pacific, and 4 for Latin America and the Caribbean. The 14 developed country representatives are formed through a process of consultation on the basis of contributions to the GEF. The larger donors can form their own constituencies. The creation of GEF constituencies grew out of a desire during GEF negotiations to increase the voice and participation of the G-77 developing countries and transition countries (Sjöberg, 1999). However, one potential problem noted in this system is that individual members may be either unwilling or find it difficult to act as genuine representatives of their constituency groups.<sup>28 29</sup>

105. The Council operates according to rules contained within the GEF Instrument for the Establishment of the Restructured Global Environment Facility and in the complementary Rules of Procedure for the GEF Council as adopted by the members of the GEF and its implementing agencies.

106. GEF Council decisions are reached on the basis of consensus. If consensus is not possible<sup>30</sup>, the Council can utilize a "double-majority" voting system that requires a 60% majority of participants, *as well as a 60% majority of donor support*. Under this system, nations that have provided the largest share of donor support to the GEF in the past have proportionally greater voting power.

#### **GEF Secretariat**

107. The GEF Secretariat carries out administrative functions and is accountable to the Council. A Chief Executive Officer (CEO) heads it, and is also Chairman of the GEF Council. While the GEF Secretariat receives administrative support from the World Bank, its operations are functionally independent of the Bank.<sup>31</sup>

#### **GEF Implementing Agencies**

108. The Implementing Agencies (IAs) —the United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), and the World Bank, as well as the Bank in its trustee role —represent a third "tripartite constituency" in that their approval is required for Assembly amendments

<sup>28</sup> There are an equal number of Alternate Members who are authorized to vote in place of regular members. The Member and Alternate representing a constituency are appointed by the Participants in each constituency. Each Member of the Council or Alternate serves for three-years, or until a new Member is appointed by the constituency.

<sup>29</sup> Recognizing this difficulty, the GEF Council has in recent years approved activities to strengthen GEF focal points in general and coordinate within constituencies.

<sup>30</sup> All GEF Council decisions to date have been taken by consensus.

<sup>31</sup> Annex B "Role and Fiduciary Responsibilities of the Trustee of the GEF Trust Fund" paragraph 1 of the Restructured Instrument, states that "The World Bank shall be the Trustee of the GEF Trust Fund ...and in this capacity shall, *as legal owner, hold in trust the funds, assets and receipts which constitute the Fund, and manage and use them only for the purpose of, and in accordance with, the provisions of the Instrument*. The Trustee, in the technical sense, serves as a *legal entity of the trust*, albeit it clearly serves at the pleasure of the Council and must be responsive to Council decisions, as per paragraphs 2 and 3 of the Restructured Instrument. This applies not only to administration of the fund on behalf of the overall activities of the GEF, but also to how funds are allocated. Hence, the GEF donors determine the amounts for each focal area and what is to be allocated to each GEF focal area. The GEF's administrative procedural arrangements with the Trustee ensure that the accountability rests with the GEF for distribution of resources. Thus, despite the fact that the current trustee (the World Bank) in its alternative role as an IA can vote on the final amendment, it is clear that as trustee, it is obligated to take its direction from the GEF.

to the GEF Instrument. The authority for this role was paragraph 1 of the original 1991 GEF Instrument. The current 2004 *Instrument* retains this requirement via paragraph 34 of Section IX "Transitional and Final Provisions" under the subheading "Amendment and termination."<sup>32</sup>

### GEF Independent Reviews

109. Independent reviews of GEF processes and progress are conducted every four years. A recent comprehensive review found that the GEF has been a catalyst for innovative programs and produced significant results to improve the global environment. In response to past criticisms regarding transparency and processing times for project applications, the GEF has worked to streamline and clarify its project cycle through its communications strategy, through arrangements made for direct access by its Partner Agencies to resources to speed funding disbursement (e.g., the GEF Council agreed as per the third replenishment policy recommendations to accord Asian Development Bank, African Development Bank, EBRD, and IDB direct access to GEF resources, as well as FAO and UNIDO for POPs and IFAD for Land Degradation specifically) and other actions.<sup>33</sup>

### 3.5.3 GEF replenishment

110. The GEF is financed by contributions from GEF members (in four-year replenishment cycles. While developing nations comprise the majority of participants, donors that are members of the Organisation for Economic Co-operation and Development (OECD) contributed more than 96% of funding to the third replenishment of GEF. Typically, donor resources contributed to the GEF (and other international funds) are drawn from ODA (official development assistance) budgets of the donor countries. At the 2005 Planning Meeting for the Fourth Replenishment of GEF Trust Fund, 27 potential donors attended. Member countries intending to donate at least SDR 4 million were invited to participate; all other GEF participants and representatives of Implementing and Executing Agencies were invited to observe the Planning Meeting.

111. The contributing participants for GEF replenishments determine via negotiations the basis for burden sharing and the total amount of contributions to the GEF. As a starting point for negotiations, the GEF Secretariat prepares a programming document that recommends amounts required to fund the activities of the different focal areas. Allocation of pledged funds, as well as the overall amount pledged might also be subject to donor negotiations, after which the GEF Council formally determines how donor pledges will be allocated. There is no "earmarking" of funds to specific focal areas or projects by individual donors. Replenishments are typically accompanied by policy recommendations, which form the basic guidelines to the GEF during the replenishment period.

112. The following table illustrates overall donor allocations to GEF-1, GEF-2 and GEF-3.

**Table 2**

Replenishment Cycle	Years	Amount (USD billion)	Number of contributing countries
GEF-1	1994-1997	2	34
GEF-2	1998-2002	2.75	36
GEF-3	2002-2006	3	32
GEF-4	2006-2010	3.13	32

Source: *The GEF, Website August 2006, <http://www.thegef.org/Replenishment/replenishment.html>*

113. The last replenishment (GEF III) provides a clear indication of donor follow-through on their pledges with 75 per cent paid by the November 2004 deadline, provided by 22 out of 31 pledging donors. Donors who request extensions under this provision are not deemed to be in arrears.

114. The negotiations for the fourth replenishment of the GEF for the time period of 2006 until 2010, was completed in August 2006 at the GEF Assembly in Capetown.

<sup>32</sup> Paragraph 34 states "Amendment or termination of the present Instrument may be approved by consensus by the Assembly upon the recommendation of Council, after taking into account the views of the Implementing Agencies and the Trustee, and shall become effective after adoption by the Implementing Agencies and the Trustee in accordance with their respective rules and procedural requirements."

<sup>33</sup> As is described in the GEF Action Plan.

### 3.5.4 GEF Resource Allocation Framework

115. During its Special Meeting of 31 August to 1 September 2005, the GEF Council approved a Resource Allocation Framework. The RAF responds to policy recommendations of the third replenishment that the GEF Secretariat and Council establish a system for allocating scarce GEF resources within and among focal areas, with a view towards maximizing the impact of these resources on global environmental improvements and promoting sound environmental policies and practices worldwide (GEF, 2005c).<sup>34</sup> The RAF is initially to be applied to the biodiversity and climate change focal areas under GEF-4. Nonetheless, it is probable that it could be applied to all GEF focal areas. Very little is known at this early pre-implementation stage about the actual impacts that the RAF will have on the ability of GEF programming to meet the needs of recipient countries as they implement the requisite international agreements addressed by the GEF.

116. In the new method of determining allocation, the RAF will apply two indices, the GEF Benefits Index (GBI) and the GEF Performance Index (GPI), to quantify the country score. This score, after being applied into two additional determinations, one of function of the total applicants' country scores, and the other a function of the total GEF resources<sup>35</sup>, determines the upper-limit share that each country is eligible to receive.<sup>36</sup> These shares, while setting the upper limit for a country's access to a focal area, are not entitlements, but rather are an envelope against which countries may request GEF grants by proposing high quality programs and projects that are consistent with the strategic objectives of a GEF focal area.

117. The GEF Benefits Index (GBI) is a measure of the potential of each country to generate global environmental benefits in a particular focal area. For example, the GBI for climate change seeks to measure the potential global benefits that can be realized from climate change mitigation activities in a country. This approach reflects the objectives of the GEF climate change operational programs to address long-term priorities to mitigate climate change. The GBI index would be different for each focal area because of their differing subject matter and strategic priorities. As such, it is difficult to speculate what would be the implications of the RAF for individual countries under other focal areas that are not yet subject to the RAF pilot and for which the GBI has not yet been articulated by the GEF.

118. The GEF Performance Index (GPI) is a measure of each country's capacities, policies and practices relevant to successful implementation of GEF programs and projects. *70% of the GPI* is comprised of a country's score on what is being called the Country Environment Policy and Institutional Assessment Indicator (CEPIA) which is drawn from the "Policies and Institutions for Environmental Sustainability" indicator of the World Bank's Country Policy and Institutional Assessment (CPIA). The CEPIA essentially measures the existence of supportive policies within a country in the area of the environment and the capacity of the country to implement these policies.<sup>37</sup> *20% of the GPI* is comprised of a Broad Framework Indicator (BFI), which is drawn from the five indicators in the "Public Sector Management and Institutions" cluster of the World Bank CPIA, which is essentially a general measure of the current state of governance capacities within a country.<sup>38</sup> The final *10% of the GPI* is comprised of a country's score on what is being called the Project Portfolio

<sup>34</sup> For a description of the GEF RAF, see GEF. 2005c. The GEF Resource Allocation Framework. GEF Council. November 8-10, 2005. GEF/C/27/Inf.8/Rev.1.

<sup>35</sup> For further clarification on this process, as well as the formulas used in this determination, please reference the GEF Resource Allocation Framework, GEF/C.27/Inf.8/Rev.1 at [http://www.gefweb.org/documents/council\\_documents/GEF\\_C27/documents/C.27.Inf.8.Rev.1\\_RAF.pdf](http://www.gefweb.org/documents/council_documents/GEF_C27/documents/C.27.Inf.8.Rev.1_RAF.pdf)

<sup>36</sup> One calculation is made at the start of GEF replenishment period and another at the mid-point, typically after 2 years of a replenishment period to re-apportion unused funds from the first half of the replenishment period.

<sup>37</sup> This indicator provides a systematic and comprehensive assessment of environment related policies and institutional frameworks within each country. It is developed by the World Bank for its client countries through separate evaluations of (i) the existence of supportive policies; and (ii) the capacity to implement and enforce policies; in each of the following six areas – air pollution, water pollution, solid and hazardous waste, ecosystem conservation and biodiversity protection, marine and coastal resources, freshwater resources and commercial natural resources. It also separately assesses the ability of countries to perform environmental assessments, set priorities, and coordinate across sectors and the extent to which public participation is facilitated through for instance the provision of public information.

<sup>38</sup> This cluster consists of the following 5 indicators:

- (a) Property Rights and Rule-based Governance;
- (b) Quality of Budgetary and Financial Management;
- (c) Efficiency of Revenue Mobilization;
- (d) Quality of Public Administration; and
- (e) Transparency, Accountability and Corruption in the Public Sector.

Indicator (PPI), which uses an average score from GEF and World Bank reviews of projects within a country.<sup>39</sup>

119. All countries that are eligible to receive GEF assistance from a focal area are scored against these two indices giving each a *country score*, which is computed through simple formulas into a proportion or “*indicative allocation*” of a share of the funds available to a focal area.<sup>40</sup> These indicative allocations are subsequently adjusted (“*adjusted allocations*”) to ensure that *no country is given an allocation of less than 1 million dollars*. The adjusted allocations are reached by redistributing resources *from* other countries in the focal area on a proportional basis. Similarly, *no individual country can exceed a ceiling* that is placed on countries within the focal area, and adjustments to bring countries under this ceiling are made with resources being redistributed on a proportional basis *to* other countries within the focal area. For example, the ceiling for the biodiversity focal area is 10% of the resources available to the focal area, while for climate change it is 15%.

120. The *adjusted allocations* for a focal area are used to place countries into one of two categories:

- **Countries that receive individual allocations:** These are the countries with the largest adjusted allocations that cumulatively equal the first 75% of the resources available to a focal area; and
- **Countries that will share in allocations of a group of countries:** The remainder of the countries beyond those that make-up the first 75% of the resources available to a focal area are placed in a group to share in the remaining collective allocations.

121. Countries receiving *individual allocations* cannot use more than 50% of their allocations in the first half of the GEF replenishment period (typically 2 years). The *upper limit* on approved projects for any country in the *group allocations* cannot exceed the *adjusted allocation* of the highest-ranked country in the group. Allocations to a country in the group cannot exceed 50% of this maximum allocation for the first half of the GEF replenishment period.

122. At the mid-way point of the GEF replenishment period, the RAF model is recalculated (i.e. a “mid-term review” to reflect updated GBI and GPI data) for the remaining 50% of the resources available to the focal area, plus the carryover of uncommitted resources from the replenishment period, to identify *adjusted individual and group allocations*.

123. It should be noted that while the GEF RAF will likely serve to enhance transparency and predictability regarding how GEF resources will be disbursed for a given focal area to which it is applied over a GEF replenishment period, there are areas of the RAF that will be challenging to implement. Examples (not intended to be exhaustive) of where implementation issues could possibly arise and about which the COP should be aware for its deliberations on appropriate and predictable financial mechanisms for the Convention include:

- **The constitution and application of the GBI and GPI indices:** the ranking of countries against the GBI and GPI indices, despite the best efforts of those completing the rankings, cannot be an exact science and countries can be expected to ask what can be done in a reasonable timeframe to alter ranking outcomes that are in dispute.
- **Ceilings on resource allocations for countries:** ceilings are being placed at the outset upon a country’s access to resources within a focal area, but these ceilings might not reflect the priority that a specific country places on the strategic objectives of the focal area nor the country’s readiness to prepare fundable projects that comply with the GEF project cycle procedures. While experience indicates that this might not be a problem for the countries with the highest individual allocations, other countries might experience difficulties.
- **Timeliness and reallocation of funds:** it might be difficult for countries, working with GEF Implementing Agencies, to propose projects and move them through the

<sup>39</sup> The project portfolio indicator used in computing GPI is developed by equally weighting the average ratings of GEF projects contained in the Project Implementation Reviews, and the average of World Bank Operations Evaluation Department (WBOED) ratings of the implementation completion reports of World Bank environment-related projects.

<sup>40</sup> Before this calculation is done the RAF model sets-aside five percent of the resources available for each of the focal areas for global and regional projects, and five percent of the resources available for each of the focal areas for the small grants program and cross-cutting capacity building activities.

GEF project cycle procedures in a sufficiently structured and timely manner to ensure their adjusted allocations are used by the end of the GEF replenishment period.

- **Competition in the group allocation:** Countries within the group allocation might find that they are in competition for resources with other countries of the group because there will be insufficient resources for all countries within the group allocation to receive the maximum possible allocations (i.e. which is the *adjusted allocation* of the highest-ranked country in the group). The more countries that approach this maximum will take away from the remaining resources available to other countries in the group.
- **Transaction cost and economies of scale:** Some countries that have been assigned to the group allocation might in practice have access to a relatively small amount of resources as compared to the transaction costs associated with developing, in cooperation with a GEF Implementing Agency or Special Executing Agency, a GEF project proposal and moving it through the GEF project cycle procedures. As a result, some countries might not practically be in a position to take advantage of GEF resources because the economies of scale are not present. While it is yet to be determined, LDCs and SIDs could disproportionately be represented among these countries both in terms of their RAF ranking and their capacities to advantageously address the GEF project cycle procedures under the RAF model.
- **Incentives of Implementing and Special Executing Agencies:** Because the GEF operates through its Implementing Agencies and Special Executing Agencies, the incentives that motivate these agencies are also an important consideration. These agencies, like all other organizations, have limited financial and human resources, including for working with countries to generate and seek approval for GEF project proposals. These agencies could possibly be more inclined to target larger projects in countries with higher allocations. This might expose LDCs and SIDs, and other countries with smaller allocations, to under-representation in the activities of the GEF agencies compounding the above noted issue of transaction costs. The RAF system will be evaluated mid-term after 2 years of operation. Such difficulties as noted are precisely the type of things the evaluators will be careful to note in their review.

124. Despite potential issues associated with the implementation of the RAF, the GEF is likely to remain a key financial mechanism for multilateral environmental agreements for the foreseeable future. It is difficult to imagine the existence of a global environmental regime that did not have an institution(s) performing the functions now being performed by the GEF. If not the GEF, another mechanism(s) would need to be created out of a continuation of the GEF's current functions, and the Basel Convention would be wise to be exploring involvement in this evolution, whatever form it takes, now rather than later. Therefore, the GEF should not be underrepresented in the considerations of the Basel Convention COP regarding the options that could potentially contribute to more appropriate and predictable financing, specifically regarding the global benefits of the Convention. There is also the more fundamental issue that while no financial mechanism is perfect, it is better than none at all.

### 3.5.5 Institutional and legal aspects of the GEF becoming a financial mechanism for a convention

125. The GEF can, of its own volition, create a focal area to serve a specific set of objectives, to serve a single MEA or other agreement, or both. Further, it can offer support to a Convention without direction from the COP. For example, the International Waters focal area de facto supports a number of Regional Seas conventions through specific projects, without being formally linked to any of these regional agreements.

126. The GEF Participants, at the Second GEF Assembly in 2002, offered to make the GEF available as a financial mechanism of the UN Convention to Combat Desertification (UNCCD), pursuant to Article 21 of the Convention<sup>41</sup> and approved an amendment to include land degradation, primarily desertification and deforestation, as one of the GEF's six focal areas in large part to assist the

<sup>41</sup> Article 21 of UNCCD observes "the Conference of the Parties shall promote the availability of financial mechanisms and shall encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention." The COP at its sixth session in 1998 via Decision 6/COP.6 accepted the GEF as a financial mechanism of the UNCCD pursuant to article 20, paragraph 2(b) and Article 21 of the Convention and in accordance with the GEF Instrument as amended (see GEF/C.25/5).

UNCCD. This outcome reflected strong demand from recipient countries that would be necessary were such a development to reoccur for another priority focal area.

127. Convention COPs have typically been instigators of requests that the GEF serve as an operating entity in support of a financial mechanism for their respective Conventions. The first such requests were extended by the respective COPs of the UN Climate Change and the Biological Diversity Conventions, following their decisions at the 1992 UN Conference on Environment and Development (UNCED) to adopt the GEF as their interim financial mechanism. The Conference of Plenipotentiaries on the Stockholm Convention, held in May 2001, requested in its Resolution on interim financial arrangements, that the GEF:<sup>42</sup>

- (a) Consider establishing a new focal area through amendment of the *Instrument for the Establishment of the Restructured Global Environment Facility* to support the implementation of the Convention;
- (b) Establish as soon as possible and implement an operational program for POPs, taking into account future decisions of the INC for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants;
- (c) Report to the Conference of the Parties at its first session on the measures it has taken to (i) ensure the transparency of its project approval process, and (ii) ensure that the procedures for accessing funds are simple, flexible and expeditious.

128. In any case, an amendment of the GEF Instrument to recognize the GEF as a financial mechanism for a particular Convention is required. As noted in Section 3.5.3, the Assembly shall “consider, for approval by consensus, amendments to the present instrument on the basis of recommendations by the Council.”

129. The GEF Instrument and MOUs between the GEF and the different conventions mandates the GEF to function under the guidance of the Conventions. The GEF is held accountable to the COPs, which decide the policies, programme priorities and eligibility criteria for the purposes of the focal areas applicable to the conventions.

130. Donor nations during the GEF replenishment process determine not only the total funding they will provide to the GEF, but may decide the amount of total funds to be allocated to each focal area. Hence there is no guarantee that financial support provided by the donors contributing to the GEF will match or approach the amount envisioned by a COP.

131. Where a COP does initiate a request that the GEF serve as a financial mechanism, it is the COP that determines the guidance for the mechanism as per existing GEF precedent as set out in Section V of the GEF Instrument. Paragraph 26 of section V, “Relationship and Cooperation with Conventions”, states unequivocally that, “The use of the GEF resources for purposes of such conventions [those it currently serves as set out in paragraph 6 of the Instrument] shall be in conformity with the policies, program priorities and eligibility criteria decided by the Conference of the Parties of each of those Conventions.” In fact, this is mentioned also as early as Paragraph 6, and then repeated in Paragraph 26.

132. COP resolutions or decisions requesting that the GEF operate a financial mechanism on behalf of the Convention triggers a joint COP-GEF Memorandum of Understanding (MOU) that formalizes the request consistent with Paragraph 27 of the GEF Instrument. MOUs may provide explicit guidance from the COP to the GEF on issues ranging from eligibility criteria for funding to GEF performance in its role as an operating entity.

133. In furtherance of its role as a financial mechanism of conventions, the GEF has cooperated closely with the COPs to elaborate Strategic Priorities (SPs) and Operational Programmes (OPs) that are expressions of COP guidance, as applicable to the focal areas created within the Instrument to service Conventions. Where synergies exist with activities of other Conventions, the GEF has emphasized these (e.g., within OPs), so long as this accommodation is not in contravention of its obligations to the Convention for which it serves as a mechanism.

134. It is important to bear in mind that there is no requirement within the GEF Instrument for the GEF to accept a request from a Convention COP that it serve as an entity entrusted with operation of a financial mechanism of the Convention. Given the GEF’s structure, the response to such a COP request

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<sup>42</sup> See Final Act on the Stockholm Convention -UNEP/POPS/CONF/4.

will, in large part, be determined by the GEF Council, where a failure to reach consensus would leave it to donor nations to determine the GEF response. Such a request was made through the sixth meeting of Conference of Parties of the Convention to Combat Desertification (UNCCD) and the MOU between the Convention and the GEF was finalised at their COP 7, November 2005. Please refer to the table below for a descriptive timeline of the UNCCD and GEF cooperation.

135. It is important to note that the UNCCD's access to GEF always existed, due to a paragraph in the GEF Instrument that allowed funding of land degradation activities "as they related to the existing GEF focal areas", i.e. biodiversity and climate change. Before the entry into force of the UNCCD, public pressure was building, with the approach of the World Summit on Sustainable Development (WSSD) in Johannesburg, to create a specific focal area for land degradation (primarily desertification and deforestation). This finally happened at the 2002 GEF Assembly (refer to table below), along with the creation of a POPs Focal Area. The Assembly also stated that the GEF would be available as a financial mechanism for UNCCD, if the COP would so wish.

136. In 2003, the sixth meeting of the Conference of the Parties to the UNCCD accepted the invitation and now developing countries, with the help of the UNCCD Secretariat, are trying to elevate UNCCD at exactly the same level as CBD and UNFCCC. However, there remains a fundamental difference with CBD and UNFCCC and that is because UNCCD does not have a real Financial Mechanism, only a Global Mechanism, which is of an entirely different nature (it acts more as broker and partnership builder than a funding mechanism). Therefore, as a financial mechanism to the UNCCD (among potentially many others) GEF does not fall under the authority of the COP, nor is it accountable to the COP. The relationship between the two is spelled out in the MOU, adopted by the COP 7.

**Table 3**  
**UNCCD Process to develop a new focal area on land degradation**

<b>Year</b>	<b>COP</b>	<b>Action Taken</b>
2000	COP 4	Various participants called for GEF window to fund UNCCD implementation
2001	COP 5	Before COP 5, the GEF Council had recommended the recognition of land degradation and desertification as a focal point, many participants welcomed this decision and expressed hope for future synergies
2002	GEF Assembly	Formal request made to add a focal area on land degradation as per the COP, at Beijing GEF Assembly meeting. The GEF Assembly agreed to the new focal area.
2003	COP 6	The Parties supported the GEF Assembly's call to endorse its request of making land degradation (deforestation) a fully-fledged GEF focal area, as was approved by the GEF Council, and designated the GEF as an operational financial mechanism of the UNCCD
2005	COP 7	The Parties asked for a significant increase in the allocation for land degradation and deforestation under GEF-4 Replenishment and the MOU between the UNCCD and GEF was signed

*Source: UNCCD Reports from COP 4, 5, 6, and 7, 2001 until 2005*

### **3.5.6 Assessing the multilateral, multipurpose fund**

137. This section provides an assessment, using the criteria found in Section 2.4, of the suitability of GEF as a mechanism for appropriate and predictable funding for the Basel Convention.

138. GEF could offer opportunities for Basel Convention implementation via its six focal areas: three related to the Rio Conventions, ozone depletion, POPs and in the case of international waters, though its operational strategy. Some of the focal areas have strong synergies with Basel Convention objectives, most notably persistent organic pollutant (POPs) wastes in the POPs focal area, solid wastes as they pertain to prevention, stabilization and reduction of greenhouse gases from waste management facilities in the climate change focal area, and environmentally sound management of wastes in the international waters focal area.

139. The GEF Instrument, as amended by the GEF Assembly in 2002, provides as follows:

“The agreed incremental costs of activities to achieve global environmental benefits concerning chemicals management as they relate to the above focal areas shall be eligible for funding. The agreed incremental costs of other relevant activities under Agenda 21 that may be agreed by the Council shall also be eligible for funding insofar as they achieve global environmental benefits by protecting the global environment in the focal areas.”

140. This could be a tangible entry point and perhaps a necessary step for the Basel Convention would be to prepare supporting information on the global environmental benefits from the Convention.

141. POPs Wastes are noted under Article 6 and Article 13 of the Stockholm Convention. Establishes a financial mechanism and requires developed Parties to provide new and additional resources to meet agreed full incremental costs. It:

- Encourages developed Parties to assist through bilateral and other channels, and
- Asks COP to provide guidance to the GEF financing mechanism and to define its institutional structure and operational measures related specifically to persistent organic pollutants.

## BOX 1

## Access to GEF via the Stockholm Convention POPs window

The provisional guidelines, criteria and priorities set for its operation programme on POPs (OP14) have now been supplemented by guidance provided by the first Conference of the Parties.<sup>43</sup>

While the GEF has a number of key advantages that enable it to play this key role:

- It made available a significant amount of money (US\$ 250 million) for POPs over the years of the 3<sup>rd</sup> phase of the GEF to 2006 and is planning similar or enhanced budgets for the 4<sup>th</sup> phase to 2010;
- It has the potential and resources to support major & costly environmental projects beyond the scope of most other individual grant donors;
- It routinely makes available grants for project development (PDF-A, PDF-B);

There are, however, a number of issues that country teams need to be aware of in considering the GEF as a funding partner for their priority actions:

- It has a lengthy project cycle with full-size projects, where the GEF contribution is expected to be in excess of US\$ 1 Million, taking perhaps 2-4 years from the first expression of a concept to its implementation<sup>44</sup>;
- Incremental cost calculations for POPs are as yet unclear and potentially complex and the GEF funds, in principle, only that element of the incremental cost relating to global benefits and requires other funding partners to meet the incremental costs associated with local benefits;
- Only enabling activities are fully funded; all other project types require co-financing at least equivalent to the GEF contribution so that country teams must explore funding possibilities from other donors, many of whom are themselves contributors to the GEF;
- It places emphasis on projects exploiting new and innovative approaches rather than on projects that represent 'routine' or repeated implementation actions at national level;
- It is introducing allocation arrangements, based on country performance and potential to generate global benefits, that may adversely impact on least developed country Parties and Parties that are small island states that have particular requirements and special needs in terms of capacity and capability development and technical approaches, and are a focus of attention for the Convention.

Many of the actions identified as priorities in the NIP will be suitable for technical assistance support. The GEF is likely to be a significant and critical source of funding but is never the only source of finance for such operations. Co-financing at least equivalent to the GEF funding is required and country teams will need to be conversant with the programmes and priorities of potential donor agencies in order to build successful funding consortia. Project teams also need to be aware of the complex project cycle of the GEF, particularly where full-size projects are proposed.

Despite such support, the likely total global cost of implementing the Convention means that Projects designed to introduce environmentally sound management and disposal will need to demonstrate measurable impacts and cost-effectiveness, perhaps through the calculation of 'unit abatement' cost. Parties will need to undertake careful problem and stakeholder analysis to determine the best interventions to remove sources of releases. Similarly, there is a clear need to link POPs actions to other national and regional initiatives to derive the significant co-benefits available.

The many stages in the management and disposal of POPs chemicals, and the problems of determining incremental costs, mean that preparing project budgets can be difficult. Nevertheless, the growing body of information from such projects can provide indicative costs for planning purposes.

While the GEF expects proposals to be country driven, a number of agencies are now available and ready to assist country teams to translate the priority actions identified in their NIPs into proposals worthy of support.

*Source: PIPER D P, (in press): 'Implementing Stockholm Convention national plans; ways forward' In: Proceedings of the 8th International HCH and Pesticides Forum, May 2005, Sofia, Bulgaria. Denmark: International HCH and Pesticides Association*

### Analysis of Replenishment

142. An analysis of the GEF's history of replenishments indicates that political will (willingness to pay) is the main driver, rather than a systematic analysis of need relative to the global environmental issues addressed by the GEF focal areas. Therefore, *adequacy* of funds provided is difficult to determine.

143. Thus far, the small core of donors (OECD nations) has appeared committed to funding the GEF and its financial mechanisms providing *relatively high predictability* as a source of funding with *equitable* access. Donor confidence in the structure of the GEF, inclusive of its system for decision-making (via the Council, Assembly and with respect to determining burden sharing during negotiations) and procedures for accessing and disbursing its funds has enhanced its *sustainability*.

144. The GEF has a high degree of *accountability* based on procedures that have evolved over time and which are set out in the GEF Instrument and also operational procedures approved by the GEF Council. The GEF has continued to make improvements in *transparency*.

<sup>43</sup> UNEP/POPS/COP.1/31 decision SC-1/15 Technical assistance

<sup>44</sup> Smaller projects have reduced project cycles and can be implemented more quickly

145. The funding currently available through the GEF is very constrained relative to the scope of wastes addressed by the Basel Convention and associated ESM life-cycle activities for these wastes (i.e., existing focal areas do not apply to the majority of listed hazardous (or other) wastes listed in the Convention). However, as noted in the RMS, there are synergies for work under GEF focal areas, most notably,

- (a) POPs wastes under the POPs focal area, and
- (b) ESM of wastes relative to the International Waters focal area.

146. It should be noted that the instrument of GEF, as amended by the 2002 GEF Assembly, provides in paragraph 3 that, “*the agreed incremental costs of activities to achieve global environmental benefits concerning chemicals management as they relate to the above focal areas shall be eligible for funding. The agreed incremental costs of other relevant activities under Agenda 21 that may be agreed by the Council shall also be eligible for funding insofar as they achieve global environmental benefits by protecting the global environment in the focal areas.*”

147. Compatibility between the GEF and the Basel Convention is somewhat low, because the GEF is not currently a financial mechanism for the Convention and does not, as a result, take guidance from the COP in any of its focal areas. There is however recognition of the Convention’s role with respect to wastes, inclusive of explicit mention of synergies in the draft Operational Programme for the POPs focal area. The manner in which the GEF works with the COPs of other conventions indicates that there is nothing significant of a structural nature that would prevent similar involvement of the Basel Convention COP in the event that there was political will to have the GEF serve as a financial mechanism for the Convention.

148. Should the Basel Convention Parties consider creation of, or formalized participation in a multilateral financial mechanism, the GEF offers an institutionally and legally feasible option, but one for which political challenges will be paramount. Potential options, both longer-term in nature (i.e. not before GEF-5), include the GEF as a financial mechanism for the Basel Convention through a dedicated wastes focal area, or a mechanism serving a cluster of related chemical conventions as linked to the UNEP-led exercise on development of a SAICM that the Basel Convention could access. Were a broad chemicals focal area to be established in the future, the Basel Convention would still need to consider alternative funding options for non-chemical wastes. Many actions suggested in the proposed Basel Convention RMS document are applicable in this regard. In either instance, contributions for activities funded through the GEF would need to be increased, such that resources available to existing mechanisms would not be diminished and additional resources provided are consistent with the scope of the new mechanism.

149. For access to GEF, under this scenario, it would be necessary for the Basel Convention to clarify its *global environmental benefits and to describe the incremental activities needed to achieve global environmental benefits*. Global environmental benefits relative to the Basel Convention could be seen as falling into four categories needing of analysis, clarification and communication at this point in the Convention’s evolution:

- (a) Controls on transboundary movements of hazardous wastes,
- (b) Activities having synergies with other conventions and agreements for which the GEF serves as an entity entrusted with operation of their respective financial mechanisms (e.g. POPs as wastes under the Stockholm Convention),
- (c) New and emerging waste implementation activities of a broad nature (e.g., electronic scrap, cell phone wastes and ship breaking wastes), and
- (d) Implementation of environmentally sound management of wastes at the domestic level (i.e. where such practices would reduce the potential for transboundary human health and environmental effects, including as linked to minimization of wastes and “green” product design that reduces/eliminates end-of-life pollutant releases associated with waste disposal).

150. Furthermore, domestic capacity for the environmentally sound management of wastes has a number of significant crosscutting implications for achieving the UN Millennium Development Goals (MDGs) such as poverty reduction, education, maternal health and diseases, notably AIDS/HIV and malaria generally as indicated in the Basel Convention RMS document presented to COP VII. These goals could be accomplished by the Basel Convention through reducing the amount of hazardous

wastes and improving their ESM and also by bettering the control of biomedical waste form injections and inoculations

### 3.6 Clean Development Mechanism under the Kyoto Protocol

151. Under the Kyoto Protocol to the UN Framework Climate Change Convention (UNFCCC), a Clean Development Mechanism (CDM) was included in Annex 1 of the Protocol. The purpose of the mechanism is to assist Parties, not included in Annex I (the Annex 1 group consists of industrializing nations) to achieve sustainable development by contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I to achieve compliance with their quantified emission limitation and reduction commitments set out under Article 3 of the Protocol.

152. The Clean Development Mechanism<sup>45</sup> (CDM) is a mechanism, not a specific fund, for emission reduction activities under the Kyoto Protocol. It is administered and monitored by the UN Framework Convention on Climate Change. The purpose of the mechanism is to assist Parties, not included in Annex 1 to achieve their quantified emission limitation and reduction limits. To fulfill their obligations of the Protocol, Parties can either minimize the emissions in their own country or minimize emissions in other countries. Emission reduction in other countries will be accounted for the total emission reduction of the country that has obligations to reduce CO<sub>2</sub> emissions.

153. The sound management and disposal of hazardous wastes can contribute to the control and reduction of greenhouse gas emissions. Integrated waste management, namely through the separation and removal of hazardous wastes from the municipal/household wastes, ensures that both waste streams are managed properly and result in the reduction of emissions. Thus, solid wastes as these pertain to prevention, stabilization and reduction of greenhouse gases from waste management facilities is consistent with the objectives of the Climate Change Convention.

154. The direct link to the Basel Convention is through, for example, the capture greenhouse gases from landfills for combined heat and power generation or the use of organic waste as bio-fuel to generate renewable energy. Such projects will also help to establish integrated waste management systems in municipalities, which help to avoid open-burning or uncontrolled rotting of municipal waste and the corresponding greenhouse gas emissions.

155. The sound management and disposal of hazardous wastes contribute to the control and reduction of greenhouse gas emissions. Integrated waste management, namely through the separation and removal of hazardous wastes from the municipal/household wastes ensures that both waste streams are managed properly and result in the reduction of emissions.

156. Under the clean development mechanism:

- (a) Parties not included in Annex I will benefit from the funding of project activities that will result in certified emission reductions (for example a landfill gas recovery project for the Czech Republic is in the pipeline under the CDM process. The project proposes to build and operate installations for extraction and subsequently flaring of methane gas or converting into electricity by gas engines at the landfill's sites in TKO Temice (Moravia, Jihomoravský District), TKO Ronov nad Sázavou (Bohemia, Vysocina District) and EKOS Revnice (Bohemia, Stredoceský District), and
- (b) Parties included in Annex I may use the certified emission reductions accrued from project activities that contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3.

157. Emission reductions resulting from each project activity will be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, on the basis of:

- (a) Voluntary participation approved by each Party involved;

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<sup>45</sup> The mechanism is administered and monitored by UNFCCC. It became operational when the Kyoto Protocol entered into force on 16 February 2005 after the Russia Federation had become a Party to the Protocol on 18 Nov 2004. The Clean Development Mechanism (CDM) allows an Annex I (industrialized) country to invest in a greenhouse gas (GHG) mitigation projects in a non-Annex I country (a developing country without emission cap). The investing country is rewarded with *Certified Emission Reductions* (CERs).

- (b) Real, measurable, and long-term benefits related to the mitigation of climate change; and
- (c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

158. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

159. The Conference of the Parties serving as the meeting of the Parties to this Protocol must, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

- The Conference of the Parties serving as the meeting of the Parties to this Protocol must ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
- Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.
- To fulfill their obligations, Parties can either minimize the emissions in their own country or minimize emissions in other countries. Emission reduction in other countries will be accounted for the total emission reduction of the country that has obligations to reduce CO<sub>2</sub> emissions. A country will always try to minimize costs involved for reducing CO<sub>2</sub> emissions. There are huge studies about how high are the CO<sub>2</sub> emission reduction costs and which option is the preferred one under specific circumstances. All this is linked to the CO<sub>2</sub> trading market.
- Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

160. As the discussions advance on the CDM and its application for credits for sustainable waste management, SBC and the regional/coordinating centres would be in a better position to assess the possibility and potentiality of cooperation.

## 4.0 Options for future action

161. In light of this study's analysis, and consistent with the proposed Basel Convention's RMS document presented to COP VII, it is proposed that the *Basel Convention Parties pursue a variety of multilateral financial mechanism options* as no one option is sufficient in and of itself. A variety of approaches can complement one another and, in some instances, also help to leverage funds available via another option. For any financial mechanism, there should be regularized reporting of contributions and projects funded at each COP, and provision for periodic independent evaluation of funds over which the Convention has control or with which it participates as a partner.

162. This section proposes options, which are additional to and should be read in combination with the options proposed in the Basel Convention's RMS document presented to COP VII, for the short, medium and longer term, with the overall objective of enhancing appropriate and predictable resources for Convention implementation. The options discussed include:

- (a) In the short term, the next Conference of the Parties (COP 8) could actively pursue a strategic approach to funding that strengthens and makes more effective use of the existing Basel Convention Trust Fund and the Basel Convention Technical Cooperation Trust Fund as applicable to both the near and the longer term;
- (b) For the medium term, COP 8 could formally request that the GEF clarify, prior to COP 9, by way of reacting to the Resource Mobilization Strategy document presented to COP 7 and this study, the areas where activities associated with implementation of

the Basel Convention could potentially be funded by the GEF without requiring changes to the GEF's current mandate and focal area operational programs;

- (c) For the longer term, COP 9 could formally request that the GEF become a financial mechanism for the Basel Convention in context of the GEF-5 replenishment. Progress towards this goal will take time and could be reviewed, and as appropriate given further impetus, at COP 9, which will occur prior to the commencement of GEF-5 replenishment discussions; and
- (d) Experiences with the GEF RAF as applied to the current pilot focal areas (biodiversity and climate change) and any proposals arising leading up to COP 9 regarding its broader application, could be closely monitored and any concerns that the COP may have shared with the GEF.

163. The following sections provide additional detail on these proposed options. Applicable to all options is the recommendation that funding for administrative support provided to the Secretariat of the Basel Convention is adequate to enable it to implement the Strategic Plan and funding priorities as directed by the Parties. This is a significant issue of concern seen objectively in context of the obligations placed on the Secretariat by the COP.

## **4.1 Short-term action**

### **4.1.1 Basel Convention Trust Fund**

164. The Conference of the Parties could prioritize in its agenda, beginning at its eighth meeting, a systematic review of its strategic priorities (e.g. the Strategic Plan focus areas) for purposes of enhancing consistency between the scope and size of the Basel Convention Trust Fund (a multilateral financial mechanism that is already at the disposal of the Basel Convention Parties) and the core operational activities with which the Secretariat has been tasked by the Convention and decisions of the Conference. Such a review should provide a basis for the consideration of budgetary allocations. A systematic review of strategic priorities has the potential to foster an improved baseline understanding by the Conference of the intended uses and required size of the Trust Fund. In addition to strategic priorities, the Conference could systematically review institutional delivery mechanisms such as the Basel Convention regional and coordinating centres to ensure that, if in the view of the Conference they remain important to implementation of identified strategic priorities, they benefit from a practical and stable core-funding arrangement to make them better able to contribute to achievement of the strategic priorities of the Convention.

### **4.1.2 Basel Convention Technical Cooperation Trust Fund**

165. The Conference of the Parties could include the Basel Convention Technical Cooperation Trust Fund as part of the above-mentioned systematic review as a way to exploit stronger strategic linkages between it and the Basel Convention Trust Fund. Whereas the Basel Convention Trust Fund should remain the financial mechanism for the core operating budget of the Convention, the Technical Cooperation Trust Fund could remain as a voluntary fund but have a much more explicit purpose to leverage additional resources for strategic programme and project priorities of the Conference that go beyond the resources currently available in the core operating budget. The strategic resource leveraging power of the Technical Cooperation Trust Fund will be enhanced if the fund is reoriented so that:

- (a) There is a limited list of key strategic priorities that would be identified under an explicit agenda item to be addressed by the Conference at each of its meetings. Such priorities could be derived from the Strategic Plan focus areas, including a coordinated plan for funding the Basel Convention regional and coordinating centres, capacity-building efforts and partnerships.<sup>46</sup> Project and regional programme priorities may need more than two years to mature (e.g., a large global initiative such as electrical and electronic waste), and could therefore be explicitly reaffirmed at one or more successive meetings of the Conference;
- (b) Contributions would be used to fund awareness raising within prospective recipient countries and among potential multilateral and bilateral donor partners about one of

<sup>46</sup> See the proposed programme budget for the Basel Convention Technical Cooperation Trust Fund (document UNEP/CHW/OEWG/5/2/Add.9).

the strategic programme or project priorities identified by the Convention in a given biennium; to provide seed money for developing proposals to donor agencies on behalf of Parties for strategic programmes or project priorities; and to provide co-financing seed money to leverage partnerships with other donors for strategic programme or project priorities;

- (c) Contributions by donors are directed to the Strategic Plan focus areas as suggested in subparagraph (a) above and to allow for secretariat discretion regarding any of the uses noted in subparagraph (b) above to maximize the timely responsiveness of the secretariat to strategic opportunities;
- (d) In efforts to reduce high transaction costs for the donor and recipient with respect to each donation, parties could be encouraged, to the extent practicable, to increase their minimum contributions to the Technical Cooperation Trust Fund to an amount agreed upon by the Parties (e.g., USD 100 000). Each contribution carries transaction costs and imposes additional burdens on the core-funding base of the secretariat. A reduction in these costs would be a cost-saving measure for the secretariat, improving the overall efficiency and effectiveness of the Fund;
- (e) The 13 per cent programme support cost charged by UNEP is reduced at least by half as applied to this fund, in light of the nature and purposes of the fund, which are dedicated to technical cooperation, as a strategic partnership-leveraging vehicle to attract more resources to the Fund.

166. To ascertain the ease for Parties to contribute to the Technical Co-operation Trust Fund, it might be prudent, as part of the proposed comprehensive review of the fund, to assess the effort it takes to make contributions. This could bring light on any policy or procedural barriers that might exist that restrict or limit the capacity of donors to provide support through this mechanism.

#### **4.1.3 Entry points to development**

167. Actions to meet the framework outlined under the Paris Declaration on Aid Effectiveness<sup>47</sup> would help countries and regional organizations access funding more readily from bilateral and other sources and pave the way to meeting GEF requirements. At the same time, consideration should be given as to how recipient organizations at the regional level will need to build their capacity and skills to implement the programmes and projects to be financed by donors or GEF. Multi-year funding agreements from donors need to be pursued for the short- and medium-term.

168. To meet the immediate and growing needs of countries to move forward and develop capacities, parties may wish to explore bilateral and multilateral aid possibilities together. Key entry points exist for financial support for capacity-building through sustainable development strategies and poverty reduction strategies. To complement a multilateral funding mechanism, such entry points could be an important lever for countries sharing critical natural resources and ecosystems that are at risk due to chemicals and wastes under the purview of the Convention.

169. For the future, capacity-development programmes and actions need to take into account the many overlaps and synergies to ensure that such programmes and actions are integrated into broader capacity-development efforts. The human and institutional capacity development needed to implement the provisions of the Basel Convention has direct links to other conventions, including multilateral environmental agreements, and programmes. Identifying possible synergies and integrating them into broader development and sustainable development strategies could help to link more readily work under the Basel Convention to the Rio conventions and other programmes for which GEF is the financial mechanism as well as other multilateral funds and financial institutions.

#### **4.2 Medium-term action**

170. At its eighth meeting, the Conference of the Parties could formally request that the Executive Secretary write, on behalf of the Conference, to the Chief Executive Officer of GEF to request the GEF Council to:

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<sup>47</sup> Paris Declaration on Aid Effectiveness, 2 March 2005, OECD Development Assistance Committee, High Level Forum on Joint Progress toward Enhanced Aid Effectiveness. (<http://www.oecd.org/dataoecd/11/41/34428351.pdf>).

- (a) Review the resource mobilization strategy document presented to the Conference of the Parties at its seventh meeting in conjunction with the study on the examination of article 14 for purposes of identifying from the GEF perspective linkages and synergies between the GEF core mandate, focal area operational programmes and strategic priorities and Basel Convention implementation activities;
- (b) Identify areas (including those synergies that are already being explored between the Stockholm Convention on Persistent Organic Pollutants and the Basel Convention) where activities associated with implementation of the Basel Convention could potentially be funded by GEF without requiring changes to the current GEF mandate, focal area operational programmes or strategic priorities, and whether there would be any unique processes or procedures required for these purposes;
- (c) Prepare a report on the considerations to be provided one year in advance of the ninth meeting of the Conference of the Parties to the Basel Convention to allow for appropriate consideration by the Open-ended Working Group;
- (d) The eighth meeting of the Conference of the Parties could also request the Secretariat to examine the potentiality for participating in, accessing and using the CDM for funding projects concerning biofuel, municipal landfills and more.

### 4.3 Longer-term action: access to GEF

171. At its ninth meeting, the Conference of the Parties could formally request that the GEF become a financial mechanism for the Basel Convention in context of the GEF-5 replenishment. Progress towards this goal will take time and could be reviewed, and as appropriate given further impetus, at COP 9, which will occur prior to the start of GEF-5 replenishment discussions.

172. To prepare for deliberations related to the GEF's potential role as a financial mechanism for the Basel Convention, the COP could request that the Secretariat commission an independent study to clarify those aspects of the implementation of the Basel Convention that have prominent global benefits, as contrasted for this purpose with national or local benefits. This study could be completed one year in advance of COP 9 of the Basel Convention to allow for appropriate pre-consideration by the OEWG.

173. A new dedicated multilateral fund option, similar to the Multilateral Fund of the Montreal Protocol, in support of the Basel Convention was not viewed as politically feasible for the foreseeable future and hence is not among the options identified in this study for consideration by the Parties. By contrast, this study proposes that the Parties pursue a variety of multilateral financial mechanism options to enhance prospects for appropriate and predictable funding for the Convention.

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## **Annex 1: Decision VII/40 on Sustainable Financing**

### VII/40. Sustainable financing

*The Conference of the Parties,*

*Aware of the extent of the negative impact of hazardous and other wastes on health and the environment in developing countries, particularly in Africa,*

*Recognizing the need to strengthen and develop the capacities of the various institutions responsible for the control and management of hazardous and other wastes,*

*Recalling the weakness of the financial, institutional, technical and legal capacities of developing countries with regard to the management of hazardous and other wastes,*

*Recalling the social and economic imperatives of sustainable development and the needs relating to poverty mitigation that require the mobilization of additional resources,*

*Recalling the Rio principles,*

*Realizing the challenge faced by developing countries and countries with economies in transition in implementing the Basel Convention and its guidelines, including through the development of technologies, materials and products relevant to the management of hazardous wastes in an environmentally sound manner,*

*Noting the effectiveness and importance of lasting and sustainable financing that will enable developing countries to implement adequately the provisions of the Convention,*

1. *Requests the Open-ended Working Group to examine article 14 of the Basel Convention, by taking into account the various options provided under the study made on resource mobilization, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention;*
2. *Requests the Open-ended Working Group to report its findings to the Conference of the Parties at its eighth meeting.*

## Annex 2: Legal examination and interpretation of Article 14

### Scope of Analysis

1. The present study is conducted pursuant to decision VII/40 concerning “Sustainable Financing” which, noting “the effectiveness and importance of lasting and sustainable financing that will enable developing countries to implement adequately the provisions of the Convention,” requested the Open-ended Working Group to:

“examine article 14 of the Basel Convention, by taking into account the various options provided under the study made on resource mobilization, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention.”

2. Article 14 of the Basel Convention, entitled “Financial Aspects”, provides as follows:

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.”

3. The only other provision in the Convention that refers to financing in the Convention is Article 15, paragraph 3, which provides:

“The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.”

4. Noting that decision VII/40 makes no reference to emergency situations but, rather, refers to lasting and sustainable financing that will enable developing countries to implement adequately the provisions of the Convention and the strengthening and development of the various institutions responsible for the control and management of hazardous and other wastes, the present analysis does not address paragraph 2 of Article 14, which refers only to the establishment of a revolving fund to assist Parties in emergency situations. The present analysis addresses only paragraph 1 of Article 14.

### Applicable rules of interpretation

5. Under public international law, the fundamental rules governing the interpretation of treaties, as reflected in Article 31 of the Vienna Convention on the Law of Treaties, 1969 (“the Vienna Convention”), are as follows:

- “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.”
6. Furthermore, Article 32 of the Vienna Convention provides for supplementary means of interpretation, as follows:

“Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

  - (a) leaves the meaning ambiguous or obscure; or
  - (b) leads to a result which is manifestly absurd or unreasonable”.

## **Interpretation of Article 14**

### **Terms given ordinary meaning in their context and in the light of treaty’s object and purpose**

7. The overall object and purpose of the Basel Convention is to protect, by strict control, human health and the environment against the adverse effects, which may result from the generation and management of hazardous wastes and other wastes.
8. For the purpose of achieving this object and purpose, it provides, *inter alia*, under Article 14, paragraph 1, for the establishment of regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation according to the specific needs of different regions and subregions.
9. In this context, Article 14, paragraph 1, states that the “Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature”.
10. It is noted that reference is made to funding mechanisms in the plural, suggesting that the Parties foresaw the possibility of more than one voluntary funding mechanism being established.
11. The restrictions placed by the Parties in this context are that such funding mechanisms should be (1) appropriate, and (2) voluntary. The Convention provides no further guidance in this regard.
12. In the absence of further guidance in the Convention, it seems reasonable to conclude that the Parties shall determine what is “appropriate” in the context of the purposes for which the funding mechanisms are intended.
13. Moreover, the requirement that the mechanisms are voluntary can be interpreted to mean, as indicated in section 1.1 of this study that any funding mechanisms established cannot impose binding financial obligations upon Parties.

14. A further question arises as to whether the funding mechanisms referred to in Article 14, paragraph 1, are limited to funding mechanisms for the regional and subregional centres for training and technology transfers, or whether this clause provides generally for funding mechanisms for the Convention. It is observed that decision VII/40 refers to “the legal and institutional feasibility of appropriate and predictable financial mechanisms *of the Convention*”, and does not limit the scope of the study to funding mechanisms for regional centres.
15. As noted above, rules of public international law concerning treaty interpretation require that the ordinary meaning be given to the terms of the treaty in their context and in the light of its object and purpose.
16. Reference to the funding mechanisms in Article 14, paragraph 1, is made in the context of the establishment of regional and subregional centres. The ordinary meaning of Article 14, paragraph 1, may therefore be that the Parties can establish appropriate funding mechanisms of a voluntary nature for the purposes of the regional and subregional centres, and that there was no intention to provide for more general funding mechanisms under this Article.

**Subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions**

17. As further noted above, in interpreting treaties, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, are to be taken into account. In this context, the decisions adopted by the Conference of the Parties may be regarded as subsequent agreements that could assist in the interpretation of Article 14.
18. A review of the decisions adopted by the Conference of the Parties in the context of funding mechanisms for the Convention indicate that, normally, the Parties have limited reference to Article 14 to decisions relating to the regional and subregional centres.
19. An examination of the decisions relating to the existing funding mechanisms for the Convention, that is, the two Trust Funds, demonstrates that these funding mechanisms are not established on the basis of Article 14. None of the relevant decisions makes reference to Article 14.
20. Decision I/7 on “Institutional and Financial Arrangements”, adopted by the First Meeting of the Conference of the Parties, first established the Trust Funds of the Basel Convention. This decision refers only to Article 16, paragraph 3 of the Convention, regarding the designation of a Secretariat by the Conference of the Parties.
21. Subsequent decisions adopted by the COP on financial matters, and governing the Trust Funds, frequently refer to previous decisions adopted by the COP, but never make reference to specific provisions of the Convention.<sup>48</sup>
22. Furthermore, a review of the decisions adopted by the Conference of the Parties that do refer to Article 14, paragraph 1, indicates that this Article is cited only in decisions that relate to the regional and subregional centres.
23. Thus, for example, decision I/13 concerning the “establishment of Regional Centres for Training and Technology Transfer” recalls, in a preambular paragraph, “Article 14, paragraph 1, which stipulates that Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature for the establishment of such regional or subregional centres”. This decision then requests the Open-ended Ad Hoc Committee to consider the expressions of interest on the regional and subregional centres by a number of countries and to report to the Conference of the Parties “on ways and means for the establishment and functioning of such centres, taking into consideration ongoing and future activities of regional centres or organizations/systems, as well as for the establishment of appropriate funding mechanisms of a voluntary nature for the establishment of such centres”.

<sup>48</sup> Decision II/27 on “Institutional, Financial and Procedural Arrangements”, approving the budget for the two Trust Funds makes no reference to any Convention clause, nor to any previous decision; decision III/28 on “Institutional, financial and procedural arrangements” refers to decision II/27; decision IV/22 on “Institutional, financial and procedural arrangements” refers to decision III/28; decision V/35 on “Financial arrangements” recalls decision IV/22; decision VI/41 on “Financial matters” refers to decision V/35; and, decision VII/41 on “Financial matters” refers to decision VI/41.

24. Subsequent decisions relating to the regional and subregional centres adopted by the Conference of the Parties refer on occasion to previous decisions, but never make reference to specific provisions of the Convention. They do, however, invite countries in a position to do so, individually or collectively, on a bilateral or multilateral basis, to consider supplying, *inter alia*, financial resources for the centres.<sup>49</sup>
25. To date, therefore, it would appear that the Parties have agreed, in the form of decisions adopted by the Conference of the Parties, that Article 14, paragraph 1, provides a basis for the establishment of voluntary funding mechanisms for the regional and subregional centres. Furthermore, it is arguable that the lack of reference to Article 14, paragraph 1, in any other decisions relating to financial matters indicates that the Parties considered that Article 14 did not have a wider scope beyond financing the establishment and activities of the regional and subregional centres.

### Supplementary means of interpretation

26. As noted above, the rules of public international law governing treaty interpretation permit recourse to the preparatory work (*travaux préparatoires*) of the treaty. Further guidance may be obtained, therefore, from the work of the Working Group of Legal and Technical Experts with a Mandate to Prepare a Global Convention on the Control of Transboundary Movements of Hazardous Wastes (“the Group”).
27. This Group was established pursuant to decision 14/30 of 17 June 1987 adopted by the Governing Council of UNEP. The decision approved the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes, and mandated the Group to prepare a global convention on the control of transboundary movements of hazardous wastes. The Group held five sessions, between February 1988 and March 1989, to develop the Convention text that was ultimately submitted to the Conference of Plenipotentiaries convened in Basel, Switzerland, in March 1989, which adopted the Convention.
28. The text of the draft Convention produced by the Group at its First Session did not include provisions for a fund for centres, nor did it refer to mechanisms for financing the Secretariat.
29. The text of the draft Convention produced by the Group at its Second Session included, under an article on “Scientific and technical cooperation among Contracting Parties” the following:<sup>50</sup>
- “1. The Contracting Parties shall:  
...  
[(e) Establish an international fund to create centres, especially in third world countries, for research and normative aspects of the management and disposal of hazardous wastes. Such centres would work actively in transfer of technology matters attached to the Convention dispositions.] \*
- \* Proposal by the expert from Colombia.”
30. It also included the following provision, under an article entitled “Conference of the Contracting Parties”:
- “The Conference of the Contracting Parties shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish, as well as financial provisions governing the functioning of the Secretariat”.
31. At its third session, the Working Group incorporated the proposed provisions on scientific and technical cooperation into the draft article on “International Cooperation”, and provided as follows:<sup>51</sup>

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<sup>49</sup> Decision II/19 on the “Establishment of regional centres for training and technology transfer” refers to decision I/3; decision III/19 on the “Establishment of regional or subregional centres for training and technology transfer regarding the management of hazardous wastes and other wastes and the minimization of their generation” refers to decision II/19; decision IV/4 on “Establishment of regional or subregional centres for training and technology transfer regarding the management of hazardous wastes and other wastes and the minimization of their generation” makes no reference to Convention provisions nor to previous decisions; decision V/5 on “Regional centres for training and technology transfer” also makes no reference to Convention provisions nor to previous decisions.

<sup>50</sup> See Report of the Ad Hoc Working Group on the Work of its Second Session, UNEP/WG.186/3, 20 June 1988.

<sup>51</sup> See Report of the Ad hoc Working Group on the Work of its Third Session, UNEP/WG.189/3, 16 November 1988.

“1. The Contracting Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes.

2. To this end, the Contracting Parties shall:

...

(h) Establish an international fund to create centres, especially in third world countries, for research and normative aspects of the management and disposal of hazardous wastes. Such centres would work actively in transfer of technology [matters attached to the provisions of the Convention] 5/ [in areas related to the subject of this Convention]. 4/, 6/

...

4/ Proposal by the Executive Director.

5/ Proposed in Caracas by Colombia.

6/ Reservation by the Federal Republic of Germany to this subparagraph (h).”

32. In addition, Article *XVbis* of the same draft, relating to “Financial matters”, listed the following:

“[1. A Trust fund for financing the Secretariat, meetings of the Contracting Parties, Panels, training, education, etc. as specified in Articles XVI and XVII of the Draft Convention; 1/

2. The international fund referred to in Article XI paragraph 2(h) (International Co-operation); 1/

3. A revolving fund to deal with emergency situations; 1/

4. The insurance of hazardous wastes shipments during their transboundary movement. ] 2/

4.bis A Contracting Party country of import may require as a condition of entry that any transboundary movement of hazardous wastes be covered by insurance, bond or other guarantee. 3/

5. An international trust fund to deal with the risks of major accidents arising from the movement of hazardous wastes and their disposal. ] 4/

...

1/ Proposal by the Executive Director.

2/ Proposal by the Executive Director. The expert from Morocco proposed this paragraph to be considered in the Article dealing with liability.

3/ Proposal by the US, which should be later considered to be moved to Article VI.

4/ Proposal by Tunisia.”

33. The draft clause did not include any further text, nor specifically state that the Parties would establish the items listed therein. A note to the heading of this draft provision refers to the comments on financial aspects contained in the report of this session, which stated, *inter alia*:

“Most experts who expressed their views on this issue, agreed that an effective Secretariat to ensure the implementation of the Convention was essential and that additional funding would be needed for that purpose. However, several experts were of the opinion that the various functions of the Secretariat needed further study before the ways and means for such additional funding could be further discussed. Also, certain functions of the Secretariat were considered to be broader than in many other conventions”.

34. The provision on the Conference of the Parties remained unchanged and the report further stated that the UNEP Secretariat was requested to elaborate a draft text for consideration at the following session of the Group, and to “prepare a background document explaining the rules and regulations applying to Trust Funds and other ways of additional financing to facilitate further deliberations on this matter at the next session of the Working Group, as well as an evaluation of financial implications of the establishment of the Secretariat.”

35. The Executive Director accordingly submitted a paper entitled “Financial Arrangements for the proposed secretariat” to the Fourth Session of the Group.<sup>52</sup> In this document, it was proposed that, if the Secretariat was to be provided by a body such as UNEP, the cost of the Secretariat should be financed from contributions placed into a trust fund administered by the Executive Director under the financial rules of the United Nations. The document outlined how contributions could be based on the United Nations scale of assessment, modified as appropriate. The document also refers to additional financing, but only addresses the possible provision of contributions in cash or in-kind, for equipment, accommodation and furniture, as well as to fund specific posts.
36. In addition, in a document containing “Proposals by the Executive Director for consideration by the Ad Hoc Working Group at its Fourth Session”, it was recommended that Article XI, paragraph 2(h), be moved from the Article on “International Cooperation”, to Article XVbis entitled “Financial Aspects”. It was also recommended that Article XVbis be amended to read, in its entirety:<sup>53</sup>
- “The Contracting Parties shall consider, with a view to approving at their first meeting, the establishment of:
- (a) An international fund to create centres, especially in developing countries, for research and normative aspects of the management and disposal of hazardous wastes. Such centres would work actively in transfer of technology in areas related to the subject of this Convention;
  - (b) A revolving fund to deal with emergency situations or risk of major accidents arising from the movement of hazardous wastes and their disposal”.
37. Furthermore, the Executive Director proposed that Article XVI, concerning the Conference of the Parties, be amended to read:
- “3. The Conference of the Contracting Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary bodies that it may establish, *as well as financial rules, to determine in particular the financial participation of the Contracting Parties under this Convention*”.
38. The Working Group agreed to move Article XI, paragraph 2(h), to Article XVbis.<sup>54</sup> However, the Group did not discuss the draft articles on the Conference of Contracting Parties and Financial Aspects at its fourth session and, accordingly, the text of these provisions as presented to the fifth session, remained as set forth at paragraphs 30 and 31 above.
39. In January 1989, the Executive Director held informal consultations with governmental experts. For these consultations, he identified certain points for further consideration, and proposed language for a number of provisions, including Article XVbis, as follows:<sup>55</sup>

“1. The Contracting Parties shall consider, at their first meeting, with a view to approving the establishment of:

- (a) a Trust Fund for financing the Secretariat, meetings of the Contracting Parties and Panels. The Contracting Parties shall consider subsequently the expansion of the scope of the Trust Fund to cover technical assistance and training.
- (b) an international fund to create centres, especially in developing countries, for research and normative aspects of the management and disposal of hazardous wastes. Such centres would work actively in transfer of technology [in matters attached to the provisions of the Convention][in areas related to the subject of this Convention].
- (c) a revolving fund to deal with emergency situations or risk of major accidents arising from the movement of hazardous wastes and their disposal.”

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<sup>52</sup> See document UNEP/WG.190/2, 15 December 1988.

<sup>53</sup> See document UNEP/WG.190/3.

<sup>54</sup> See Report of the Ad hoc Working Group on the Work of its Fourth Session, UNEP/WG.190/4, 13 February 1989.

<sup>55</sup> See document ELMU/4947e.

40. It appears that this proposal was not accepted, as it is not reflected in any later drafts considered by the Group.
41. Subsequently, the Executive Director submitted a proposal to the Group at its fifth session for possible wording for Article XVbis, as follows:<sup>56</sup>
- “Paragraph 1:  
‘Contracting Parties shall consider the need and appropriate funding mechanisms of a voluntary nature for regional centres for training and technology transfers regarding the management of hazardous wastes and the minimization of their generation.’
- Paragraph 2:  
‘The Contracting Parties shall consider the establishment of a revolving fund to deal with emergency situations or damage from major accidents arising from movement of hazardous wastes and their disposal.’”
42. The fifth session of the working group revised the draft provisions and submitted it to the Conference of Plenipotentiaries.
43. It is noted that the article relating to the Conference of the Parties, as submitted to the Conference of Plenipotentiaries, adopted the proposal made by the Executive Director reflected in paragraph 37 above. Moreover, the requirement that the funding mechanism be voluntary in nature, first proposed by the Executive Director in the proposal set forth at paragraph 41 above, is brought into the article relating to financial aspects.
44. With respect to the provisions on Financial Aspects and the Conference of the Parties, the draft submitted to the Conference of Plenipotentiaries by the Group bears the wording that was finally adopted by the Conference, and which is reflected today, in Articles 14 and 15, respectively, in the Basel Convention.
45. The above review of the development of the relevant provisions of the Convention indicate that the concept of the fund contained in Article 14, paragraph 1, has at all times related to the establishment of centres and that the countries concerned considered that funding for other purposes, such as for the Secretariat and for meetings of the Parties, should be addressed separately. This would tend to support the proposition set forth in paragraphs 16 and 25 above, that the funding mechanisms referred to in Article 14, paragraph 1, are intended to be limited to the establishment and support of the regional and subregional centres.

## Conclusion

46. Decision VII/40 seeks an examination of article 14, with a view to determining the legal and institutional feasibility of appropriate and predictable financial mechanisms of the Convention. The above analysis of Article 14, paragraph 1, indicates that its scope is limited to providing appropriate and predictable financing mechanisms for the regional and subregional centres.
47. However, Article 15, paragraph 3, of the Convention mandates the Conference of the Parties to agree upon and adopt “financial rules to determine in particular the financial participation of the Parties under this Convention”. The Parties could choose to apply a wide interpretation to “financial participation of the Parties under” the Convention, reading it as not being limited to the contribution of the Parties to meet the costs of the Secretariat, but extending to any costs that may arise under the Convention. By this interpretation, the Parties are vested with the authority to agree upon rules for any type of financial participation of Parties under the Convention.
48. Furthermore, as reflected in paragraphs 20 and 21 above, which address the existing funding mechanisms of the Convention, it is clear that the Trust Funds were not established by reference to Article 15, paragraph 3, of the Convention but, rather, were established by reference to the activity or entity for which such funding was required, in this case, the discharge by the Secretariat of its functions.

<sup>56</sup> See document UNEP/WG.191/3/Add. 4, 12 March 1989.

49. There appears to be nothing to prevent the Conference of the Parties from establishing further funding mechanisms if they should determine that these are required for the purposes of, and activities under, the Convention. Thus, it is not necessary to limit the authority of the Conference of the Parties to establishing funding mechanisms for lasting and sustainable financing to that prescribed by Article 14. Rather, such funding mechanisms can be justified, in the context of the Convention, by reference to the object and purposes of the Convention as enumerated therein.
50. Furthermore, it is to be noted that, Article 15, paragraph 5, provides:
- “5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:
- ...  
(c) Consider and undertake *any additional action* that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11” [emphasis added].
51. The preambular paragraphs of decision VII/40 indicate that the need for appropriate and predictable financial mechanisms is based upon the experience gained to date in the operation of the Convention, particularly the experience of developing countries. The Conference of the Parties may choose, therefore, to take “additional action” to establish appropriate and predictable financial mechanisms of the Convention, with a view to promoting the achievement of the purposes of the Convention, including enabling developing countries to implement adequately the provisions of the Convention.

## Annex 3: Glossary of types of multilateral financial mechanisms

1. This annex provides a typology of multilateral financial mechanisms that are or could potentially be applicable to the Basel Convention. It is important to recognize that multilateral financial mechanisms can include a mix of the types generally characterized below.

### General purpose trust funds— negotiated fund with scale of assessments

2. General purpose trust funds are typically applied to ordinary expenditures associated with institutional support, such as for international organizations and convention secretariats. Examples of institutional support include institutional infrastructure (facilities, equipment), staffing, administrative overhead, operational costs, and logistical support, such as funding the attendance at meetings of participants from developing countries and CEITs.

3. General purpose funding mechanisms of this type can also be used to support program objectives (e.g., the UNEP Environment Fund, which is the principal source of financing for implementation of core UNEP activities). Theme-based or program objectives are determined by the membership served by the fund (e.g., Parties to a Convention as represented by the Conference of the Parties).

4. The contributions of individual Parties to these funds are typically based upon an agreed, negotiated level of funding, which is then apportioned according to a formula such as the UN General Assembly scale of assessments, as is the case for the UNEP Environment Fund and the Trust Fund for the Basel Convention and other MEAs<sup>57</sup>. Such funds often attempt to be inclusive involving contributions from developed and developing nations alike, but the majority of funding support typically comes from developed nations.

5. The Parties or their designated representatives determine the size and priorities for these funds, and costs for operation of the mechanisms are borne by the contributing Parties. Typically, a budget is developed based on line items consistent with the fund's purposes and identified priorities for a particular funding period (biennium, five-year, etc.), as agreed to by the fund participants collectively (e.g., the COP of an MEA). With respect to the process for contributing, each donor nation and entity, consistent with the negotiated formula, pledges an amount that it plans to contribute.

### Specialized trust funds—donor driven

6. These trust funds typically involve donor countries separately (i.e. as opposed to in a formal negotiating process) determining how much they will contribute and for what purpose. Generally, all or most contributions to such a fund are "earmarked" for a specific purpose or purposes as determined by the donor in its own interests, and with the expectation that other nations will share this interest.

7. Donors to these types of funds may and usually do place specific restrictions on how funds are allocated in support of priorities. For example, the donor may determine that funds it provides are applicable to a particular region, to particular types of activities in support of a priority, and will be available for a circumscribed period only. Such funds may not be shifted to other uses, hence are non-discretionary from the perspective of the fund implementing body and countries or organizations that might wish to access these donor resources.

8. These funds are typically administered by an existing international organization (e.g. host organization) for purposes of providing a mechanism to receive and disburse additional donor resources in support of the organization's overall work program. The costs for operating these funds can be built into the annual operating budget of the host organization or offset by way of administration fees charged to contributions to the fund or both.

<sup>57</sup> Some modifications in the UN formula have emerged regarding the Trust Fund for the Basel Convention, in part reflecting that negotiated assessments are still at the discretion of national governments.

### **Programme specific trust funds—partnership based**

9. These types of trust funds typically involve a single theme responding to a perceived high priority global or regional need, generally arising out of an international or regional forum. Thus, for example, the 2002 Johannesburg World Summit on Sustainable Development (WSSD) gave more prominent emphasis to partnerships.

10. Programme specific, partnership trust funds are typically established by the fund's key sponsors, with invitations extended to other partners in the expectation that new partners will be financial contributors to the fund. The partners pledge funds that contribute towards meeting a budgetary target (e.g., as set by the "lead" sponsors) in support of activities proposed to implement the program objective. Partners may include a mix of government donors, private sector entities (e.g., industry associations), non-governmental organizations (NGOs) and foundations. Donors can attach conditions to their pledges.

11. These types of trust funds are typically administered by an existing legal entity such as an international financial institution (IFI) with funds accounted for separately from the IFI's own resources. The IFI makes financial and administrative arrangements with donors leading to grant funding for the specified program priorities of the fund. The distribution of funds is generally based on country-driven demand but may be limited to a specific region or group of recipient nations for a variety of practical reasons and/or based on eligibility or performance criteria that are built into the fund's design to create incentives in support of the objectives of the fund program. Administration fees are typically charged to contributions to the fund to cover the administration costs of the fund.

### **Programme-specific trust funds —donor based**

12. These trust funds typically involve a single or limited number of themes responding to a perceived high priority global or regional need, generally arising out of an international or regional forum. One or a few donors typically establish them with funds administered by an existing legal entity such as an IFI with funds accounted for separately from the IFI's own resources. Administration fees are typically charged to contributions to the fund to cover the administration costs of the fund. Conditions of eligibility and operation are variable, as determined by the donors.

13. A dedicated multilateral financial mechanism manages a fund focusing on supporting the implementation of one international agreement or programmatic theme. Generally, those served by the fund (e.g., Parties to an MEA) determine its purpose, priorities and operative parameters.

14. All Parties to the international agreement or program that is being supported by the fund negotiate the fund's size for a standardized replenishment period. Contributions by individual donors are set by an agreed scale of assessment (e.g., the UN General Assembly scale of assessments).

15. A separate institution established specifically to administer the multilateral fund is one unique characteristic of this type of financial mechanism for purposes of the typology used in the study. The costs for operation of the mechanism are borne by contributing Parties.

### **Multi-purpose multilateral financial mechanism—negotiated fund with scale of assessment**

16. A multi-purpose, multilateral financial mechanism administers a fund or funds that supports projects implemented under more than one international agreement, and/or for global activities outside the scope of any agreement, including activities cross-cutting to various agreements. The size of the fund is negotiated and agreed between donors, and apportioned according to a scale of assessment.

17. This type of multilateral financial mechanism has its own set of governance structures, operating procedures, and guidelines applicable to all of its activities, and which generally can accommodate other international agreements brought into the mechanism at a later date. However, the governing bodies of each of the agreements served by the multi-purpose mechanism also provide overall guidance regarding the priorities that will be funded for that specific agreement, and the eligibility requirements for accessing funds (e.g., Party or signatory to the MEA) allotted to support implementation of the agreement. The costs for operation of the mechanism are borne by the contributing Parties.

## Annex 4: COP 6 - Terms of reference for Basel Convention trust funds

### *COP 6 UNEP/CHW.6/40: Appendix to Decision VI/41 Financial Matters*

#### Appendix I

#### TERMS OF REFERENCE FOR THE ADMINISTRATION OF THE TRUST FUNDS FOR THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

1. The scope of the Trust Fund for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter referred to as the Basel Convention Trust Fund) is to provide financial support for the ordinary expenditure of the secretariat of the Basel Convention.
2. The scope of the Trust Fund to Assist Developing Countries and Other Countries in Need of Technical Assistance in the implementation of the Basel Convention (hereinafter referred to as the Technical Cooperation Trust Fund) is to provide financial support in particular for:
  - (a) Technical assistance, training and capacity-building;
  - (b) Basel Convention Regional Centres;
  - (c) Appropriate participation of the representatives of developing countries Parties and of Parties with economies in transition;
  - (d) Cases of emergency and compensation for damage resulting from incidences arising from transboundary movements of hazardous wastes and other wastes and their disposal.
3. The financial period of both Trust Funds will be a biennium consisting of two consecutive calendar years.
4. The trust funds shall be administered by the Executive Director of the United Nations Environment Programme (UNEP), with the approval of the Governing Council of UNEP, pursuant to the Financial Regulations and Rules of the United Nations.

#### Contributions

5. The appropriations for the Basel Convention Trust Fund shall be replenished by:
  - (a) Contributions made by the Parties to the Convention, by reference to the table attached as an appendix to the budget, including additional contributions and contributions from any new Parties, which are to be added to the table;
  - (b) Contributions from States not party to the Convention, other governmental, intergovernmental and non-governmental organizations and other sources.
6. The appropriations of the Technical Cooperation Trust Fund for this period shall be financed from voluntary contributions made by the Parties and the non-parties to the Convention, intergovernmental and non-governmental organizations and other sources.
7. The contributions referred to in paragraph 5 (a) above are to be based on the United Nations scale of assessments for the apportionment of the expenses of the United Nations.
8. All contributions are due to be paid in the year immediately preceding the year to which the contributions relate.
9. All contributions shall be paid in United States dollars or their equivalent in a convertible currency into a bank account to be designated by the Executive Director, in consultation with the Executive Secretary of the Convention secretariat.

10. The secretariat shall acknowledge all pledges and contributions and shall inform the Parties once a year of the status of pledges and payments of contributions.
11. Contributions from States that become Parties after the beginning of the financial period shall be made *pro rata temporis* for the balance of the financial period.
12. Contributions not immediately required for the purpose of either trust fund shall be invested at the discretion of the United Nations and any interest so earned shall be credited to the funds.

#### **Budget**

13. The budget estimates covering the income and expenditure for each of the calendar years constituting the financial period to which they relate, prepared in United States dollars, shall be submitted for approval at the regular meeting of the Conference of the Parties to the Convention at least 90 days prior to the meeting for submission to the Conference of the Parties.
14. The estimates for each of the calendar years covered by a financial period shall be specified according to objects of expenditure and shall be accompanied by such information as may be required by, or on behalf of, the contributors and such further information as the Executive Director of UNEP may deem useful and advisable.
15. The decision of the Conference of the Parties on the budget, including contributions thereto, shall be made by consensus prior to the commencement of the financial period it covers.
16. Adoption of the budget by the Conference of the Parties shall constitute authority to incur obligations and make payments for purposes for which the appropriations were approved and up to the amount so approved. Commitments against the resources of the trust funds may be made only if they are covered by the necessary income. No commitments shall be made in advance of the receipt of contributions.
17. The Executive Secretary may make transfers within each of the main appropriation lines of the approved budget. The Executive Secretary may also make transfers between such appropriation lines up to limits, which the Conference of the Parties may set as appropriate.

#### **Funds**

18. The Basel Convention Trust Fund shall be managed by the Executive Secretary of the secretariat of the Basel Convention. All resources under paragraphs 5 (a) and 5 (b) above shall be credited to the Basel Convention Trust Fund and all expenditures included in the approved budget shall be charged to the Fund.
19. Within the Trust Fund there shall be maintained a working capital reserve at a level to be determined from time to time by the Conference of the Parties by consensus. The purpose of the working capital reserve shall be to ensure continuity of operations in the event of a temporary shortfall of cash. Drawdowns from the working capital reserve shall be restored from contributions as soon as possible.
20. The Technical Cooperation Trust Fund shall be managed by the Executive Secretary of the secretariat of the Basel Convention and shall receive voluntary contributions under paragraph 6 above.
21. At the end of a calendar year of a financial period, the Executive Director shall transfer any uncommitted balance of appropriations to the following calendar year.

#### **Accounts and audit**

22. All funds governed by the present terms of reference shall be subjected to the internal and external audit process of the United Nations.
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