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Issues arising out of the first meeting of the Conference of the Parties: study of possible options for lasting and sustainable financial mechanisms

Study of possible options for lasting and sustainable financial mechanisms

Note by the secretariat

The secretariat has the honour to submit, in the annex to the present note, a study, prepared in response to the request in decision RC-1/5, on the possible options for lasting and sustainable financial mechanisms which will enable developing countries to implement adequately the provisions of the Convention. The study is being circulated without formal editing.

* UNEP/FAO/RC/COP.2/1.

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Annex

Study on Possible Options for the Establishment of a Financial Mechanism for the Implementation of the Rotterdam Convention

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Executive Summary

At its first session, the Conference of the Parties (COP) to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade requested that the Secretariat prepare a study “into the possible options for lasting and sustainable financial mechanisms which will enable developing countries to implement adequately the provisions of the Convention.” This study responds to that request. The study reviews and compares financial mechanisms that have been established by the parties of multilateral environmental agreements (MEAs) to facilitate and enable developing countries in their implementation of the agreements. Additionally, the study examines the Global Environment Facility (GEF), which serves as the interim operational entity for several of the MEA financial mechanisms.

The study explains that, for purposes of comparison, financial mechanisms under multilateral environmental agreements may be defined by their *function* and *how they are administered*. Regarding **function**, the mechanism may serve a *funding* or *coordinating* function. *Funding mechanisms* provide financial assistance to help address a country’s technical and capacity needs. In contrast, the primary purpose of *coordinating mechanisms* is not to provide funding; instead, they assist in “resource mobilization” by identifying outside sources of funding and assistance and helping countries apply for such funding and assistance.

Administration pertains to the entity that operates the financial mechanism. *Stand alone operational entities* are “treaty specific”; i.e., they administer a mechanism for a single MEA. A *multipurpose operational entity* administers the financial mechanisms of more than one treaty or agreement. The GEF is the only multipurpose financing facility for MEAs.

The study proceeds by summarizing the current financing situation under the Rotterdam Convention, insofar as the provision of technical assistance funding to developing countries and countries with economies in transition is concerned. This financing summary takes note of: the negotiations on such assistance that occurred during the Intergovernmental Negotiating Committee (INC), the technical assistance needs that developing countries identified during the INC, and the COP’s establishment of a voluntary special trust fund on an interim basis for the period of 2005-2006.

For the main body of the study, six financial mechanisms and entities are reviewed:

(a) The Basel Convention Technical Cooperation Trust Fund;

(b) The Multilateral Fund of the Montreal Protocol on Substances that Deplete the Ozone Layer;

(c) The Global Environment Facility (GEF);

(d) The financial mechanism of the Stockholm Convention on Persistent Organic Pollutants (POPs);

(e) The Adaptation Fund of the Kyoto Protocol to the United Nations Framework Convention on Climate Change; and

(f) The Global Mechanism of the United Nations Convention to Combat Desertification.

These mechanisms and entities were selected because they each represent a different approach to providing financial assistance to developing countries to help them achieve the objectives of an MEA. For each mechanism or entity, the study provides a short background of the relevant MEA and its basic obligations, the mechanism's purpose and approach, how it was established and is administered, its source of funds, its procedures for obtaining assistance, and any procedures for accountability between the mechanism and the MEA's Conference of the Parties. The review of each mechanism or entity then concludes with an evaluation of its advantages and disadvantages and its suitability as an option for consideration by the Conference of the Parties to the Rotterdam Convention.

The study suggests that MEAs consistently experience serious shortfalls in addressing the technical assistance financing needs of developing country parties when they rely *only* on (1) voluntary contributions for their financial mechanisms, or (2) coordinating mechanisms instead of true financing mechanisms. For example, the Basel Convention Technical Cooperation Trust Fund, which relies on voluntary contributions, has been able to provide only limited and generally inadequate resources, leading Basel Convention parties to begin the process of determining the feasibility of "appropriate and predictable financial mechanisms" for the Basel Convention. Similarly, the Desertification Convention until recently had only a coordinating mechanism (the "Global Mechanism"), not a true financial mechanism. After an independent evaluation of the Global Mechanism concluded that it had not been successful in mobilizing new sources of technical assistance funding, the Desertification Convention COP decided to accept the GEF as a financial mechanism of the Convention and to commence arrangements to establish a working relationship with the GEF.

The study further suggests that the Montreal Protocol's Multilateral Fund—which is the primary example among MEAs of a mandatory "stand alone" financial mechanism —has been a key reason for the Protocol's success, because it has provided sustained resources to developing countries to assist their implementation of Protocol provisions. However, the study also makes clear that since the Multilateral Fund's establishment as an interim mechanism in 1990, no similar financial mechanism has been created for any MEA, because donor states have been unwilling to replicate the Fund's mandatory, stand-alone model for additional MEAs. Instead, governments agreed to establish the GEF with its focal areas approach.

Taking that history into account, the study suggests that the GEF may present a realistic opportunity for realizing the objective of sustained, reliable streams of new and additional finance to assist developing country parties in their implementation of Rotterdam Convention provisions. Different approaches are identified that could be taken under the present GEF focal areas structure; however, establishment of an expanded, integrated chemicals management focal area with new and additional funds could also be an effective way forward, and could fit within the broader goal of a strategic approach for international chemicals management that includes the Rotterdam Convention.

Based upon its evaluation of each mechanism, the study identifies nine options that the Conference of the Parties to the Rotterdam Convention may wish to consider at its next meeting. The options are presented in three categories. The first is "existing legal framework" options that can likely be achieved within the Rotterdam Convention's currently existing framework of relevant legal instruments. The second category is "existing outside institution" options that could be achieved without the necessity of creating a new institution or mechanism. Under these options, the Rotterdam Convention would rely upon a financial mechanism or operational entity that already exists outside of the Convention. The final category of options would require the creation of a new institution or legal framework.

The first category would likely be the easiest set of options to adopt and implement, while the third category would probably be the most difficult. The study briefly summarizes potential advantages and disadvantages of each option.

A. "Existing Legal Framework" Options

Option 1: <u>Continue the status quo</u>. Parties could choose to do nothing other than utilize the special voluntary trust fund that has already been established.

Option 2: <u>Urge the GEF to include more Rotterdam-related activities under the POPs focal area</u>. Parties could carry through on Decision RC-1/14 by urging the GEF to more aggressively and proactively consider including Rotterdam-related activities under the current POPs focal area.

Option 3: <u>Enhance the voluntary special trust fund to operate as a coordinating mechanism</u>. Parties could expand the terms of reference for the voluntary special trust fund so it also operates as a coordinating mechanism that can work with the GEF, multilateral and bilateral implementing agencies, and other potential funding sources to identify and procure funding, including co-finance that allows POPs, Basel, Montreal Protocol, and other projects to obtain additional Rotterdam benefits.

B. "Existing Outside Institution" Options

Option 4: <u>Use the Montreal Protocol Multilateral Fund</u>. Parties could request the Multilateral Fund to serve as the operational entity for a Rotterdam Convention financial mechanism.

Option 5: <u>Use the Stockholm Convention financial mechanism</u>. Parties could request the Stockholm Convention to allow its financial mechanism to also serve as the financial mechanism for the Rotterdam Convention.

Option 6: <u>Expand the existing GEF POPs focal area</u>. Governments could decide to expand the existing GEF POPs focal area to serve a cluster of chemicals conventions and processes.

C. New Institution or Legal Framework Options

Option 7: Establish a Rotterdam Convention financial mechanism. Parties could establish a new, stand alone financial mechanism for the Rotterdam Convention.

Option 8: Establish a financial mechanism for chemicals agreements. Rotterdam parties could join with the parties of other agreements to establish a new, multipurpose mechanism for a thematic cluster of chemicals agreements that reflects the fact that chemicals issues tend to be inter-related and cannot be dealt with in isolation.

Option 9: Impose a levy on importers/exporters. Parties could explore the plausibility of imposing a levy on exporters and/or importers of Rotterdam-listed chemicals that would be used to fund capacity building activities. Alternatively, such a discussion could take place at a broader level, including all institutions involved in international chemicals management, and considering larger segments of the chemicals industry.

List of Acronyms and Abbreviations

ASP	African Stockpiles Project
C	centigrade
CBD	Convention on Biological Diversity
CBO	community-based organization
CDM	Clean Development Mechanism
CEO	Chief Executive Officer
CFCs	chlorofluorocarbons
COP	Conference of the Parties
COP/MOP	Conference of the Parties serving as the Meeting of the Parties
CRIC	Committee for the Review of the Implementation of the Convention
EIT	economy in transition
FAO	Food and Agriculture Organization
FIELD	Financial Information Engine on Land Degradation
G-77	Group of 77
GEF	Global Environment Facility
GM	Global Mechanism
IA	Implementing Agency
IFAD	International Fund for Agricultural Development
INC	Intergovernmental Negotiating Body
M&E	Monitoring and Evaluation
MEA	multilateral environmental agreement
MOP	Meeting of the Parties
MOU	Memorandum of Understanding
NGO	non-governmental organization
NIP	National Implementation Plan
ODA	overseas development aid
ODS	ozone depleting substances
OECD	Organisation for Economic Co-operation and Development
OEWG	Open-ended Working Group
PIC	prior informed consent
POPs	persistent organic pollutants
SAICM	Strategic Approach to International Chemicals Management
SGP	Small Grants Program
UNCCD	United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	United Nations Industrial Development Organization
US $	United States dollars

Study on Possible Options for the Establishment of a Financial Mechanism for the Implementation of the Rotterdam Convention

1. Introduction

1.1. Background and Purpose of Study

1. At its first session, the Conference of the Parties (COP) to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade requested that the Secretariat prepare a study "into the possible options for lasting and sustainable financial mechanisms which will enable developing countries to implement adequately the provisions of the Convention."[1] The COP further requested that the study:

(1) Review and evaluate existing financial mechanisms for other multilateral environmental agreements to identify possible options for a Rotterdam financial mechanism;

(2) Analyze the advantages and disadvantages associated with each of the options;

(3) Describe feasible options for consideration at the second meeting of the Conference of Parties; and

(4) Build, as far as is feasible, upon existing financial mechanism studies already developed or being developed.

2. The purpose of this study is to support decision-making by the COP on a possible financial mechanism that would enable developing countries to adequately implement relevant provisions of the Convention. The study builds upon an earlier note by the Secretariat to the Second PIC Intergovernmental Negotiating Committee (INC) that summarized mechanisms for providing financial resources for the activities envisaged under environmental and other conventions and protocols,[2] and upon a report to the Persistent Organic Pollutants (POPs) INC on "existing mechanisms for providing technical and financial assistance to developing countries and countries with economies in transition for environmental projects."[3] Moreover, this study takes into account available information related to a financial considerations study for the Strategic Approach to International Chemicals Management (SAICM) and ongoing efforts by the Secretariat to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal to prepare the ground within international, regional, and bilateral funding agencies for requests for assistance from Basel Convention

[1] Decision RC-1/5, UNEP/FAO/RC/COP.1/33 (2004).
[2] *Financial Resources and Mechanisms,* UNEP/FAO/PIC/INC.2/4 (1996).
[3] *Existing Mechanisms for Providing Technical and Financial Assistance to Developing Countries and Countries with Economies in Transition for Environmental Projects*, UNEP/POPS/INC.2/INF/4 (1998).

parties. In both the SAICM and Basel Convention cases, however, study drafts on financial considerations were neither completed nor available during the time when the present study was being prepared.

1.2. Scope and Structure of Study

3. This study reviews and compares financial mechanisms that have been established by the parties to multilateral environmental agreements (MEAs) to facilitate and enable developing countries in their implementation of the agreements. Additionally, the study examines the Global Environment Facility (GEF), which serves as the interim operational entity for several of the MEA financial mechanisms. The study does not cover regional development banks, bilateral aid, private sector investment, or development non-governmental organizations (NGOs)—all of which may be important sources of financial assistance to Rotterdam developing country parties. Neither does the study assess the amounts of financing needed for implementation of the Rotterdam Convention, nor does it address the legal means by which a financial mechanism might be adopted (e.g., by COP decision, amendment to the Convention, etc.).

4. The study is presented in five Parts:

Part 1 is the Introduction.

Part 2 describes a means of classifying MEA financial mechanisms by model or type.

Part 3 summarizes the current state of technical assistance financing under the Rotterdam Convention.

Part 4 reviews and evaluates financial mechanisms established by multilateral environmental agreements; the Part also reviews the Global Environment Facility (GEF).

Part 5 presents options for consideration by the Conference of the Parties to the Rotterdam Convention at its second meeting (COP 2).

5. Part 4 reviews these financial mechanisms and entities:

(a) The Basel Convention Technical Cooperation Trust Fund;

(b) The Multilateral Fund of the Montreal Protocol on Substances that Deplete the Ozone Layer;

(c) The Global Environment Facility (GEF);

(d) The financial mechanism of the Stockholm Convention on Persistent Organic Pollutants (POPs);

(e) The Adaptation Fund of the Kyoto Protocol to the United Nations Framework Convention on Climate Change; and

(f) The Global Mechanism of the United Nations Convention to Combat Desertification.

6. These six mechanisms and entities were selected because they each represent a distinct approach to providing financial assistance to developing countries to help them achieve the objectives of an MEA. Information on each is presented using the following template (modified somewhat for the GEF and the GEF-operated funds):

(a) Background of the MEA and the problem it is intended to address;

(b) Basic treaty obligations;

(c) Purpose and approach of the financial mechanism;

(d) Establishment of the mechanism;

(e) Administration of the mechanism;

(f) Source of funds;

(g) Procedures for obtaining assistance from the mechanism, including eligibility and availability of different funding levels; and

(h) Accountability and provisions for monitoring and evaluation.

7. The review of each mechanism or entity then concludes with an evaluation of its advantages and disadvantages and its suitability as an option for consideration by the Conference of the Parties to the Rotterdam Convention. This evaluation is guided by two distinct, but related questions:

(1) What is the suitability of a financial mechanism *model* or *type* to the Rotterdam Convention? and

(2) What is the suitability of using an *existing financial mechanism* (or operational entity) for the Rotterdam Convention?

8. In evaluating the suitability of the *models* and the *existing mechanisms*, the following criteria may be considered:

(a) Effectiveness, including sustainability, predictability, and dependability of adequate funding;

(b) Feasibility, including operationality (workability), and political feasibility;

(c) Efficiency, including whether the mechanism duplicates the services provided by existing mechanisms or facilities;

(d) Accountability of the operational entity to the COP; and

(e) Transparency for parties and the public.

9. In evaluating whether an *existing mechanism* (or operational entity) may be suitable for the Rotterdam Convention, these additional criteria might be considered:

(a) Commonality of parties;

(b) Overlapping technical needs;

(c) Complementarity of actions (i.e., do actions satisfy or bring added value toward achieving an overarching policy objective); and

(d) Commonality of chemicals.

10. These additional criteria may be especially relevant in determining whether it might be appropriate to *cluster* different MEAs on a thematic basis. By using a single financial mechanism for a thematic cluster, projects could be designed to respond to the obligations of all or at least many of the MEAs in the cluster. This approach could assist MEAs within a cluster to integrate their activities at the country (or regional) level and thus more efficiently and effectively achieve global environmental benefits.

2. Financial Mechanism Models: Function and Administration

11. For purposes of comparison, financial mechanisms under multilateral environmental agreements may be defined by their *function* and *how they are administered*.

12. Regarding **function**, the mechanism may serve a *funding* or *coordinating* function. *Funding mechanisms* provide financial assistance to help address a country's technical and capacity needs. Funding mechanisms may receive their financial resources through voluntary contributions, mandatory or indicative assessments, or a combination of contributions and assessments. The financial mechanism for the Stockholm Convention on Persistent Organic Pollutants (POPs) is a funding mechanism.

13. In contrast, the primary function of *coordinating mechanisms* is not to provide funding. Instead, they assist in "resource mobilization" by identifying outside sources of funding and assistance, and by helping countries apply for such funding and assistance. The Global Mechanism for the Convention to Combat Desertification is a coordinating mechanism. In some cases, a mechanism may serve both coordinating and funding functions.

14. **Administration** pertains to the entity that operates the financial mechanism. Such entities may be either *stand alone* or *multipurpose* operational entities. *Stand alone operational entities* are "treaty specific"; i.e., they administer a mechanism for a single MEA. They may be an existing entity under the MEA (such as the secretariat), or they may be established solely for the purpose of administering the MEA's financial mechanism. For example, the Basel Convention's Technical Cooperation Trust Fund is managed by an existing entity, the Basel Secretariat. The Multilateral Fund for the Implementation of the Montreal Protocol is overseen by an Executive Committee with the assistance of a Fund Secretariat, both of which were established by Montreal Protocol parties for the purpose of administering the financial mechanism.

15. A *multipurpose operational entity* administers the financial mechanisms of more than one MEA. It may also provide assistance that falls outside the scope of any MEA. The parties to an MEA negotiate the arrangement under which the multipurpose entity will administer the MEA's financial mechanism. The Global Environment Facility (GEF) is the only multipurpose operational entity for MEAs.

Function	Administration
Funding 1. voluntary contributions 2. mandatory or indicative assessments 3. combination	Stand Alone 1. existing entity (e.g., convention secretariat) 2. new entity (e.g., Executive Committee of the Multilateral Fund)
Coordinating (resource mobilization)	Multipurpose (e.g., the GEF)

Note: In descriptions of its relationship to the conventions, the GEF is often referred to as the "financial mechanism."[4] With the exception of the Desertification Convention, this is technically incorrect. As the Instrument for the Establishment of the Restructured GEF and the relevant portions of the Climate, Biological Diversity, and Stockholm POPs Conventions all clearly state, the GEF is the entity that, "on an interim basis," *operates* the financial mechanisms of the conventions.[5]

3. Technical Assistance Financing under the Rotterdam Convention

3.1. Summary of Negotiations

16. Beginning at INC1, developing countries and countries with economies in transition highlighted the importance of financial assistance to their ability to implement a legally binding PIC procedure. Further discussion of a possible financial mechanism was postponed until INC3, after there had been time for delegates to consider the note on financial resources and mechanisms that the Secretariat prepared for INC2.[6] At INC3 and INC4, an informal contact group established by the plenary developed and further elaborated elements on financial resources and mechanisms for possible inclusion in the Convention. However, governments were ultimately unable to achieve consensus on the issue, and the final convention text agreed to at INC5 did not contain provisions for a financial mechanism. Since that time, including at COP 1, many governments have continued to stress the need for an effective financial mechanism to assist developing countries and economies in transition in their implementation of the Convention.

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[4] *See e.g.,* Global Environment Facility, *Participants: Conventions* (undated), *at* http://www.gefweb.org/participants/Conventions/conventions html (last viewed Apr. 22, 2005).
[5] *See, e.g.,* Global Environment Facility, Instrument for the Establishment of the Restructured Global Environment Facility (as amended in 2002), para. 6 [hereinafter GEF Instrument] (stating that the GEF shall "operate the financial mechanism for" the UNFCCC, be "the institutional structure which carries out the operation of the financial mechanism" for the CBD, and "serve as an entity entrusted with the operation of the financial mechanism" of the Stockholm Convention).
[6] UNEP/FAO/PIC/INC.2/4 (1996).

3.2. Summary of Technical Assistance Needs

17. Article 16 of the Rotterdam Convention provides:

> The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

18. Article 16 is an important, useful part of the Convention. Nonetheless, based upon the experiences of other MEAs, Article 16 will likely not, by itself, result in all of the technical assistance needs of developing countries and countries with economies in transition being met.

19. The types of technical assistance needs for which developing countries and countries with economies in transition may require financial assistance were identified in a report prepared by the Secretariat for presentation at INC10 and in a study prepared by the Secretariat for presentation at INC11.[7] The identified assistance needs may be divided into two categories: domestic capacity building needs and information exchange. Domestic capacity building requirements included informing policy makers, strengthening legislative and administrative capabilities, improving coordination and communication, and training personnel. Information exchange needs included capacity building for expanded use of the Internet and alternative training methods. The report and study also cited the need for establishing or strengthening national systems and mechanisms for the acquisition, storage, and distribution of pertinent information to relevant parties, as well as assistance in setting up mechanisms for stakeholder involvement.

3.3. Current Financing Opportunities

20. At its first session, the COP established a voluntary special trust fund on an interim basis for the period of 2005-2006.[8] The voluntary special trust fund is for the benefit of developing countries and countries with economies in transition to assist their participation in convention meetings and to facilitate their implementation and ratification of the Convention. Both parties and non-parties may contribute to the fund.[9] The Secretariat will report on the status of contributions to the fund in the financial reports that will be prepared for COP 2.

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[7] *Compilation and Analysis of the Results and Conclusions of Workshops on the Rotterdam Convention*, UNEP/FAO/PIC/INC.10/21 (2003); *Study on Technical Assistance Needs*, UNEP/FAO/PIC/INC.11/INF/1/Add.1 (2004).

[8] Decision RC-1/17, UNEP/FAO/RC/COP.1/33 (2004).

[9] The amount budgeted for 2005 is US $745,844. For 2006 it is US $932,579.

21. Additionally, the COP has invited developed countries to assist developing countries in establishing integrated chemicals management systems within existing regional cooperation frameworks.[10] Existing financial institutions such as the GEF and the World Bank have also been invited to provide support for chemicals management and to encourage synergies between those activities and actions necessary to enable developing countries to implement adequately the provisions of the Convention.[11]

22. Insofar as the GEF is concerned, establishment of the GEF POPs focal area has provided some opportunities to provide resources that benefit developing country parties to the Rotterdam Convention. Both the Rotterdam and Stockholm POPs Conventions rely on many of the same underlying legal, regulatory, and institutional infrastructure capacities to manage chemicals. Strengthening these capacities for implementation of the Stockholm Convention can have the co-benefit of strengthening the capacity of countries to implement the Rotterdam Convention (and vice versa). As a result, when evaluating a POPs project proposal, the GEF may be able to identify ways to deal with non-POPs substances (and thus achieve Rotterdam-related benefits) at a relatively small incremental cost. The GEF may then be able to arrange co-financing for the non-POPs part of the project.

23. In mobilizing resources for borrowing countries, the World Bank integrates chemicals management considerations into its Country Assistance Strategies. For example, in the African Stockpiles Project (ASP), analysis of a country's eligibility for disposal or prevention projects takes into account whether the country has ratified or acceded to agreements such as the Stockholm, Basel, Bamako, and Rotterdam Conventions. The Bank notes that "[a]ctivities aimed at institutional strengthening, development of regulatory frameworks, and capacity building in the area of chemical safety in African countries have the potential to serve the objectives of both the Rotterdam Convention and ASP."[12]

4. Existing Financial Mechanisms of Multilateral Environmental Agreements

24. Part 4 of this study begins by reviewing and evaluating two kinds of stand alone financial mechanisms: the Basel Convention's voluntary Technical Cooperation Trust Fund and the Montreal Ozone Protocol's mandatory Multilateral Fund. Next, Part 4 examines the Global Environment Facility, which is the only multipurpose operational entity for MEAs. The Part then briefly reviews two financing mechanisms that are presently operated by the GEF: the financial mechanism for the Stockholm POPs Convention, and the Adaptation Fund of the Kyoto Protocol to the Framework Convention on Climate Change. Part 4 closes by reviewing a coordinating (resource mobilization) mechanism, the Global Mechanism of the United Nations Convention to Combat Desertification.

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[10] Decision RC-1/14, UNEP/FAO/RC/COP.1/33 (2004).
[11] *Id.*
[12] Africa Stockpiles Program website, *Program Overview* (2003), *available at* http://www.africastockpiles.org/pdf/infosheets.pdf.

4.1. Stand Alone Mechanism with Voluntary Contributions: The Basel Convention Technical Cooperation Trust Fund

25. The Trust Fund to Assist Developing Countries and Other Countries in Need of Technical Assistance (Technical Cooperation Trust Fund) is a voluntary mechanism established under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Fund is 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.[13]

26. Like the Technical Cooperation Trust Fund, the special voluntary trust fund established by the Conference of the Parties to the Rotterdam Convention at COP 1 is a voluntary, stand alone financial mechanism. Thus, experiences under the Basel Convention may provide an indication of how the Rotterdam special voluntary trust fund might be expected to perform.

4.1.1. Background: The Basel Convention

27. The tightening of environmental regulations in industrialized countries in the late 1980s led to a dramatic rise in the cost of hazardous waste disposal there. Many companies in these countries began shipping hazardous wastes to developing countries and Eastern Europe as a way to get rid of them more cheaply. International outrage over this practice led to the negotiation and adoption in 1989 of the Basel Convention.[14] The Convention entered into force 5 May 1992. It had 165 parties as of April 2005.

4.1.2. Basic treaty obligations

28. The objectives of the Basel Convention are to reduce the generation and transboundary movement of hazardous wastes to a minimum and ensure that such wastes are treated and disposed of as close to the source of generation as possible and in an environmentally sound manner. The Convention covers toxic and eco-toxic, poisonous, explosive, corrosive, flammable, and infectious wastes.

29. The Convention sets up a framework for controlling the transboundary movement of hazardous wastes. Transboundary movements of hazardous wastes or other wastes can take place only upon prior written notification by the State of export to the competent authorities of the States of import and transit (if appropriate). Each shipment of hazardous waste or other waste must be accompanied by a movement document from the point at which a transboundary movement begins to the point of disposal. Hazardous waste shipments made without such documents are illegal. In addition, there are outright bans on the export of these wastes if the exporting state "has reason to believe the wastes in question will not be disposed of in an environmentally sound manner." Transboundary

[13] *Financial Matters*, Decision VI/41, UNEP/CHW.6/40, at 173 (2003).
[14] Basel Convention website, *Origins of the Convention* (undated), *at* http://www.basel.int/pub/basics.html#top (last viewed April 15, 2005).

movements can take place, however, if the state of export does not have the capability to manage or dispose of the hazardous waste in an environmentally sound manner. The Convention also developed criteria for "environmentally sound management" of wastes, which require members to take practical steps to minimize the generation of hazardous waste by controlling the storage, transport, treatment, reuse, recycling, recovery and final disposal of the waste.

30. Additionally, parties adopted a convention amendment (the Ban Amendment) to ban the export of hazardous wastes for final disposal, recovery, or recycling from developed (OECD) countries to developing countries. Parties also adopted a Liability and Compensation Protocol to deal with damage resulting from the transboundary movement of hazardous wastes, including incidents due to illegal traffic. Neither the Ban Amendment nor the Liability Protocol has yet entered into force.

4.1.3. The Technical Cooperation Trust Fund: Purpose and approach

31. The Technical Cooperation Trust Fund is intended to assist developing countries and other countries in need of technical assistance in their implementation of the Basel Convention. The Fund provides financial support for: (a) technical assistance, training and capacity-building; (b) Basel Convention Regional Centers; (c) participation of the representatives of developing country parties and parties with economies in transition in convention meetings; and (d) cases of emergency assistance and compensation for damage resulting from transboundary movements of hazardous wastes and other wastes and their disposal.[15]

32. Because the Fund has only limited resources for mostly earmarked activities, it is generally able to support only a relatively small number of projects. As a result, the Fund usually makes small grants, some of which are used to develop projects with the hope that they can be replicated or can build the foundation for larger scale operations.

4.1.4. Establishment of the Fund

33. Article 14 of the Basel Convention recommends the establishment of regional or sub-regional centers for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation. Article 14 further provides that "Parties shall decide on the establishment of appropriate funding mechanisms of a ***voluntary nature***" (emphasis added). Moreover, it requires consideration of the establishment of a revolving fund to assist in emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes.

34. Pursuant to Article 14, the COP established the Technical Cooperation Trust Fund at its first meeting in 1992. The Fund was established for an initial period of two years. Since then, its mandate has been periodically extended. At its sixth session in 2003, the COP enlarged the scope of the Technical Cooperation Fund to include assistance to

[15] *Financial Matters,* Decision VI/41, at 173.

developing countries and economies in transition facing emergencies created by the transboundary movement of hazardous wastes.[16]

4.1.5. Administration

35. The Technical Cooperation Trust Fund is administered by UNEP, pursuant to the Financial Regulations and Rules of the United Nations, and the Terms of Reference approved by the COP.[17] The Basel Convention Secretariat manages the Fund. The Secretariat provides assistance within the limits of its existing financial resources, including providing advice and responding to requests for information and documentation related to the Convention.

36. The budget of the Technical Cooperation Fund for 2004 was US $ 5.34 million. Of that amount, about $1.26 million was to support attendance at convention meetings, and 13% ($615,00) represented administrative overhead.[18] The budgets for 2005-06 were sharply higher, $ 17.8 million and $12.3 million, respectively, due to the business plans of the Basel Convention Regional Centers. However, in all cases, these budgets reflect the sum of needs expressed by parties and the anticipated costs of assisting developing country representatives in attending convention meetings. The budgets do not indicate actual revenues received, which have generally turned out to be far less. For example, while the 2003 budget for the Fund was $4.55 million, the actual amount collected in 2003 from all sources was less than US $1.42 million and actual 2003 project expenditures were $1.15 million.[19]

4.1.6. Source of funds

37. Contributions to the Technical Cooperation Fund are voluntary. The COP urges all parties and non-parties, international organizations, including development banks, NGOs and the private sector, to make financial contributions.[20] In the past, contributions have come almost exclusively from parties and signatories to the Convention.

38. From 1999 to September 2004, voluntary contributions to the Technical Cooperation Trust Fund have totaled US $4.52 million. Nearly all contributions were earmarked either for developing country participation in meetings or for specific project activities. The few un-earmarked contributions were used for participation of delegates from developing countries and countries with economies in transition.[21]

4.1.7. Obtaining assistance

39. Because most contributors to the Technical Cooperation Fund earmark their contributions, and because all contributions are voluntary, the Fund does not have a

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[16] *Interim Guidelines for the Implementation of Decision V.32 on "Enlargement of the Scope of the Technical Cooperation Trust Fund,"* Decision VI/14, appendix, UNEP/CHW.6/40 (2003).
[17] *Financial Matters*, Decision VI/41, at 173.
[18] *Id.* at 183-84.
[19] *Additional Financial Information, Addendum,* UNEP/CHW.7/INF/17/Add.1, at 10 (2004).
[20] *Financial Matters*, Decision VI/41, at 173.
[21] *Additional Financial Information,* UNEP/CHW.7/INF/17, at 23 (2004).

dependable stream of discretionary financial resources available. Accordingly, the Secretariat has not instituted a formal procedure for submitting project proposals. Rather, the Secretariat approaches project grants on an ad hoc basis. When the Fund has (or the Secretariat anticipates the Fund will have) available resources, the Secretariat either identifies and implements projects based on needs expressed by parties, or provides funds in response to a project proposal submitted by a party. Projects are distributed equitably according to regional and national diversities and specificities as appropriate.

40. Nearly all projects are developed with earmarked contributions and most are modest in size. Some larger projects have been underwritten. For example, a developed country government contributed 1 million Euros to support development of a Regional Center. Nevertheless, the earmarking system and the scarcity of financial resources make relatively small projects the norm under the Fund.

41. The Fund has a special procedure for emergency assistance. State parties that are developing countries or countries with economies in transition are eligible to receive emergency assistance. The list for determining eligibility is based on the categorization of country development levels prepared by the Organisation for Economic Co-operation and Development (OECD). Countries in need of such assistance may submit their requests directly to the Secretariat. The instructions and format for requests may be found in the interim guidelines at http://www.basel.int/meetings/interguide00.html. As of April 2005, no party had actually applied for emergency assistance under this process.

4.1.8. Accountability; provisions for monitoring and evaluating

42. The Basel Secretariat, as manager of the Technical Cooperation Trust Fund, is fully accountable to the COP. The Secretariat regularly provides financial statements and related reports regarding the Fund to the COP, the Expanded Bureau (officers of the COP and representatives of the geographic regions responsible for providing guidance on administrative and procedural matters), and the "Open-ended Working Group" (OEWG) (a convention subsidiary body that assists the COP in developing and reviewing implementation of the Convention's work plan, operational policies, and COP decisions).

43. No provisions exist for formal, independent evaluation of the Fund. It has been the practice of the Expanded Bureau to conduct periodic reviews and evaluations of the Fund's operations, which in turn are used to inform the COP. These are internal processes; the results are not publicly available.

4.1.9. Advantages and disadvantages

44. As mentioned above, the Rotterdam Convention's special voluntary trust fund is, like the Basel Technical Cooperation Trust Fund, a voluntary, stand alone financial mechanism. Thus, the experiences under the Basel Convention may provide an indication of how the Rotterdam special voluntary trust fund might be expected to perform.

45. The Basel Convention COP at its last session considered a report prepared by the Expanded Bureau and the OEWG entitled, "Mobilizing resources for a cleaner future:

implementing the Basel Convention." In discussing the Technical Cooperation Trust Fund, the report concluded:

> [T]hus far, this fund has provided only limited resources for mostly earmarked activities, which include covering the cost of bringing representatives from developing countries and other countries requiring assistance to official meetings. Hence, the Basel Convention—despite its breadth, scope, global membership and the universal need of developing nations to develop strategies and mechanisms for [environmentally sound management] of wastes—owing to limited resources is in danger of becoming an "orphaned" convention with respect to capacity of its developing nation and EIT Parties to implement its provisions.[22]

46. The COP responded to this report by requesting the OEWG to determine "the legal and institutional feasibility of appropriate and predictable financial mechanisms of the [Basel] Convention."[23] Thus, the Basel Convention, which like the Rotterdam Convention has only a voluntary fund for assisting developing country parties, is proceeding to evaluate the possibility of strengthening its ability to provide financial assistance.

47. By requiring the Secretariat to manage the Technical Cooperation Fund, the COP has placed a burden on the Secretariat that arguably falls beyond the Secretariat's original responsibilities under the Basel Convention. However, this approach may have saved some costs by avoiding the necessity of establishing a new institution or negotiating an understanding with an external operational entity. Additionally, having the Secretariat manage the Fund may have helped make the Fund more accountable to the COP than could have been the case with an external operational entity.

48. Given the severe funding constraints within which it must operate, the Fund has been fairly successful in developing modest pilot projects. It is unknown to what extent these pilot projects have led to projects of greater scope and permanence. The *ad hoc* way in which these projects are developed (resulting from the unpredictability and scarcity of project finance) may have had a negative impact on transparency for parties and the public, because there are few set project approval procedures or timelines that stakeholders can monitor and be aware of. The Fund has successfully provided assistance to numerous developing country party representatives so that they might attend convention meetings.

49. Since 1999, the Basel Convention has been shifting its emphasis to regional and national implementation. Consequently, the level of funding required is now much higher than it previously was, while the voluntary aspect of the Technical Cooperation Fund means that it cannot adequately provide the financial resources needed to implement medium-to large-scale projects. Contributions have historically been quite

[22] *Mobilizing Resources for a Cleaner Future: Implementing the Basel Convention,* UNEP/CHW.7/INF/8, at 15 (2004).
[23] *Sustainable Financing*, Decision VII/40, Basel Convention COP 7 Report, UNEP/CHW.7/33, at 78 (2005).

modest, and they have remained static even while the number of Basel parties has increased significantly. The Fund's annual revenues are consistently and often dramatically lower than the projected needs itemized in the budget. The most predictable aspect of the Fund is that revenues will fall short of needs. Moreover, the fact that nearly all contributions to the Fund are earmarked for specific uses means that the Fund is predominantly donor-driven, and it is difficult for the Fund to develop a coherent, over-arching strategy for project development.

50. Given the Technical Cooperation Fund's limitations, it is unclear whether there are any ways in which the Rotterdam Convention would benefit from using it or a similar mechanism. However, it may be appropriate for the Basel and Rotterdam Conventions to be served by a common fund or operational entity if the fund had a predictable and adequate revenue stream. Being global MEAs, the two conventions have a high commonality of parties. More important, they both fall within the same broad thematic area of international chemicals management. Moreover, because effective implementation of the Rotterdam Convention may further the aim of waste minimization under the Basel Convention, Rotterdam-related benefits could likely be achieved at a modest incremental cost if the Basel Convention had adequate provisions for project finance.

51. Because the two conventions each deal with different stages in the chemicals life cycle, they do not have a large overlap of technical needs. A thematic cluster comprised only of the Basel and Rotterdam Conventions may therefore not achieve significant utility. However, to the extent a thematic cluster included international chemicals management instruments dealing with the entire chemicals life cycle, such as the Stockholm POPs Convention and instruments that may emerge from the Strategic Approach to International Chemicals Management (SAICM), then the Basel and Rotterdam Conventions could both comprise logical parts of that cluster.

4.2. Stand Alone Mechanism with Mandatory Contributions: The Multilateral Fund of the Montreal Protocol

52. The Multilateral Fund for the Implementation of the Montreal Protocol is a stand alone financial mechanism established by the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. Contributions to the Fund from developed country parties are agreed on a triennial basis by the Protocol parties, based on a needs assessment, and are shared according to the United Nations Assessments Scale.

4.2.1. Background: The Montreal Protocol

53. The ozone layer in the stratospheric layer of the atmosphere protects life on earth from the harmful effects of certain wavelengths of the sun's ultra-violet light. In the 1970s, emissions of chlorofluorocarbons (CFCs) in industrial applications were linked to destruction of the ozone layer. Concerns that destruction of the ozone layer could result in significant harm to human health and the environment led governments in 1985 to adopt a framework agreement, the Vienna Convention for the Protection of the Ozone

Layer, to begin addressing the problem. That year, a large hole in the ozone layer over the Antarctic was detected, prompting Vienna Convention parties quickly to negotiate a graduated phase out of ozone depleting substances under the Montreal Protocol.

54. The Montreal Protocol was adopted in 1987. It entered into force in 1989 and has 189 parties as of March 2005. The Protocol has been adjusted and amended several times to accelerate its phase out schedules, introduce additional control measures, and add other controlled substances.

4.2.2. Basic Treaty Obligations

55. The Protocol establishes control measures to reduce and phase out the production and consumption of listed ozone depleting substances (ODS) within specific timeframes. Parties must report statistical data on their production, import, and export of controlled substances, both annually and for certain base years. They must ban the import and export of controlled substances from and to non-parties. The Protocol sets out procedures for parties to report data on their compliance with treaty requirements. It contains provisions for facilitating research, public awareness, and the development and exchange of information related to best technologies, alternative substances and processes, and costs and benefits of relevant control strategies.

56. Developing countries that consume 0.3 tonnes or less per capita of ODS are referred to as "Article 5" countries. They were given extended timeframes for complying with the Protocol's phase-out requirements. As of 2004, over 140 of the Protocol's parties were operating as Article 5 countries. Now that the Protocol has entered the "compliance period," all parties, including Article 5 countries, must adhere to its phase-out schedules.

4.2.3. The Multilateral Fund: Purpose and approach

57. The main objective of the Multilateral Fund is to assist the compliance of developing (Article 5) country parties to the Protocol by providing them with funding and technology. The Fund accomplishes this by financing activities such as closing ODS production facilities, converting existing manufacturing facilities, training personnel, paying royalties and patent rights on new technologies, and establishing National Ozone Offices. Financial and technical assistance is provided in the form of grants or concessional loans delivered primarily through four international implementing agencies.

58. The mandate of the Multilateral Fund is to:

- meet the agreed incremental costs of implementing the Protocol;
- finance clearing-house functions that
  - (a) assist developing country parties in identifying their needs for co-operation;
  - (b) facilitate technical co-operation to meet these identified needs;
  - (c) distribute information and relevant materials, and hold workshops and training sessions; and

(d) facilitate and monitor other multilateral, regional and bilateral co-operation available to parties that are developing countries; and

- finance operation of the Fund Secretariat and related support costs.

4.2.4. Establishment of the Fund

59. Upon the Montreal Protocol's entry into force, its parties recognized the necessity of a mechanism that could provide financial and technical assistance to Article 5 countries to facilitate their compliance with the Protocol's control measures. After the issue was studied by an Open-Ended Working Group, parties agreed in 1990 to amend the Protocol's Article 10 to provide details about the purpose, structure, and operation of the mechanism. They also established the Multilateral Fund on an interim basis at that time. Two years later, they decided that the Fund should operate on a permanent basis; the permanent Multilateral Fund became operational in 1993.

4.2.5. Administration

60. Parties to the Montreal Protocol agreed upon Terms of Reference for the Multilateral Fund and Terms of Reference for the Fund's Executive Committee when they decided in 1992 to establish the permanent Fund.[24]

61. The *Executive Committee* manages the resources of the Fund. The Committee is comprised of seven Article 5 (developing country) and seven non-Article 5 (developed country) parties. Committee members are selected each year by the Protocol's Meeting of the Parties. The Committee has a double-majority voting procedure designed to ensure that neither donors nor recipients may dominate decision-making. In practice, however, all decisions are taken by consensus. This provides all participating countries equal rights in the governance of the Fund, and is in line with the principle of common but differentiated responsibilities.

62. The *Secretariat of the Multilateral Fund* is comprised of 11 professional and 11 support staff. It is responsible for the day-to-day operations of the Multilateral Fund and for reviewing project proposals; preparing policy, planning, guidance, and financial documents to be sent to the Executive Committee for approval; and arranging for and servicing Committee meetings.

63. The Multilateral Fund is served by four *Multilateral Implementing Agencies* that assist in program and project development. They are the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO), and the International Bank for Reconstruction and Development (World Bank). Additionally, UNEP serves as the *Treasurer* of the Fund.

[24] *Report of the Fourth Meeting of the Parties to the Montreal Protocol*, UNEP/OzL.Pro.4/15, annexes IX and X (1992).

64. An important aspect of the Multilateral Fund is the extensive legal and institutional infrastructure it has generated. The procedures and guidelines governing the Fund began to be established well over a decade ago and have continued to develop. Over that time, donor states have consistently honored their funding commitments. National Ozone Offices have been created in every Article 5 country. The Executive Committee and the Multilateral Implementing Agencies—along with the bilateral implementing agencies of many of the developed country parties, and the regional networks and National Ozone Offices—have collectively formed a strong project development, policy/regulatory advice and implementation network for achieving the objectives of the Montreal Protocol.

65. The net budgeted costs for administering the Multilateral Fund and the Executive Committee for 2005 were US $3,867,547.[25]

4.2.6. Source of funds

66. Pursuant to Article 10.6 of the Protocol (as amended), the Multilateral Fund is financed by mandatory contributions from developed country member states based on the principle of additionality. The Multilateral Fund is replenished on a three-year basis at a level agreed by the parties. The actual contribution shares paid by each donor country are based on the United Nations Assessments Scale. Contributions from other parties are also encouraged, but are not mandatory. Up to 20 percent of the financial obligations of contributing parties can be delivered by them bilaterally in the form of eligible projects and activities.

67. Pledges have amounted to US $ 2.1 billion over the period of 1991 to 2005. For the entire period through 2004, payments against pledges stood at 91 per cent.[26] The Fund has been replenished five times. The last replenishment (2003-2005) was for $474 million.

4.2.7. Obtaining assistance

4.2.7.1 Application procedures

68. Any Article 5 party is eligible to receive assistance from the Multilateral Fund. For initial capacity building and institutional strengthening requests, the Ozone Secretariat typically advises the Fund Secretariat that a country has become a party to the Montreal Protocol and its Amendments. An Implementing Agency (IA) begins discussions with the party to identify its needs and develop project proposals. The time from submission to approval varies by project type. Performance-based, multi-year agreements that often contain both investment and non-investment activities and Government commitments are submitted 12 weeks prior to one of the three Executive Committee meetings each year; most other requests are submitted eight weeks prior to meetings. The Fund Secretariat discusses the projects with the IAs and submits documents containing comments and recommendations to the Executive Committee four weeks prior to meetings.

[25] *Report of the Executive Committee of the Forty-Fourth Meeting*, UNEP/OzL.Pro/ExCom/44/73, annex XVI, at 169 (2004).
[26] *Id.* at 6, para. 24.

69. The goal of the Fund Secretariat is to assist the party and IA to ensure that the proposal presents no problems that could delay its approval by the Executive Committee. Over 95 per cent of projects raise no significant policy issues; their details have been worked out and agreed in advance by the party, IA, and Fund Secretariat. They are placed on a single list and receive blanket approval from the Executive Committee. On the other hand, projects that raise specific issues—such as performance-based, multi-year agreements between governments and the Executive Committee—require specific approval from the Executive Committee.

4.2.7.2 Accessing different levels of funding

70. Article 5 countries are eligible to request and receive funding for developing their Country Programs when they indicate their intention to ratify the Montreal Protocol. This prepares them to comply with the Protocol as soon as they become legally bound by it. After ratification, the party may apply for grants for all eligible activities. In general, the next activity is the development of a National Ozone Unit that is housed within the Government and financed by the Fund's institutional strengthening program. The application and approval process for capacity building and institutional strengthening requests can proceed very quickly, depending on how proactive the requesting country is. For example, an Article 5 country that requested funding to develop its Country Program in 2004 received funding three months after UNEP submitted the request to the Executive Committee. These types of projects can range between US $30,000 to US $500,000.

71. The process for larger, more complex project categories such as the performance-based, multi-year agreements similarly depends upon how proactive a country is. While such agreements require more analysis and take more time to develop, their development (also supported with Fund resources) and approval can take place in less than one year. These include investment project activities (focusing on the conversion or shutting down of enterprises that use or produce ODS), regional management plans, and multi-year agreements between governments and the Executive Committee. The Multilateral Fund does not usually seek or assist in the arrangement of co-financing; however, there have been projects where resulting savings in energy usage have leveraged funding from other institutions.

4.2.8. Accountability; monitoring and evaluation

72. The Multilateral Fund is co-located with UNEP and is UNEP's largest environmental fund. It operates under the authority of the Protocol's Meeting of the Parties. The Executive Committee must report annually to the Meeting of the Parties.

73. The Fund Secretariat monitors Fund activities at different levels. At the individual project level the Fund Secretariat scrutinizes data on the performance of projects reported by the implementing and bilateral agencies. It reviews individual agency business plans and assesses how the Fund is helping developing countries to comply with the Protocol's phase-out targets and timetables.

74. The Executive Committee oversees these monitoring activities. The implementing agencies submit progress reports to the Executive Committee once a year. The Fund Secretariat has developed a standard format for these reports, which has simplified the Executive Committee's oversight. Projects that are experiencing delays are monitored more closely and are reported to each Executive Committee meeting.[27]

75. Periodic evaluations of the Multilateral Fund are prepared by independent consultants under terms of reference agreed by the parties.[28] The most recent evaluation generally found the Fund's performance to be quite strong. Among other things, the evaluation recommended various measures regarding the Executive Committee structure and number of meetings; continuing efforts for efficient operation; monitoring funds, delays, and overhead costs; and financial management and the management of contributions.[29]

4.2.9. Advantages and disadvantages

76. The Montreal Protocol is frequently described as the most successful global multilateral environmental agreement. Much of that success may be traced to the level of financial resources that have been made available through the Multilateral Fund, which are based on needs assessment and have been successfully directed towards meeting the Protocol's objectives. Over the years, those resources have been sustained due in part to the high level of political commitment from donor countries, the strong compliance system that links the availability of funding with a recipient country's compliance, and the mandatory approach for assessing Fund contributions.

77. Because it operates as a stand alone financial mechanism created by the Protocol's Meeting of the Parties (MOP), the Fund "serves one master" (the MOP) and has thus characteristically been accountable and responsive to the MOP. The Fund Secretariat staff has been able to focus exclusively on, and develop deep expertise in, project and financial management and monitoring related to the Montreal Protocol. By the same token, however, the Fund may be subject to fewer demands from non-party stakeholders for participation and transparency than is the Global Environment Facility (described below), precisely because it applies to one MEA rather than several, and thus has a lower public profile. As a result, public access to, and information about, the Fund's proceedings may be somewhat more difficult to obtain.

78. As is the case with most of the global MEAs, the Montreal Protocol has a high commonality of parties with the Rotterdam Convention. Yet, despite the fact that the Protocol regulates ozone depleting substances and is thus technically a "chemicals" agreement, the two MEAs may not be readily viewed as falling within the same thematic cluster. Indeed, the Montreal Protocol is frequently considered more akin to the Climate

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[27] Multilateral Fund website, *Monitoring* (2003), ***at*** http://www.multilateralfund.org/results_impact.htm (last viewed April 15, 2005).
[28] Multilateral Fund website, *Evaluation* (2003), ***at*** http://www multilateralfund.org/evaluation.htm (last viewed April 15, 2005).
[29] *Evaluation of the Financial Mechanism of the Montreal Protocol: Executive Summary,* UNEP/OzL.Pro.16/11 (2004).

Convention than to other chemicals agreements like the Basel or Stockholm Conventions. The Montreal Protocol and Rotterdam Convention do not deal with the same chemicals and have many dissimilar technical requirements, insofar as most of the finance approved from the Multilateral Fund has been for investment project activities that focus on the conversion or shutting down of enterprises that use or produce ODS. Moreover, the National Ozone Offices generally operate outside the framework of chemicals management in most countries.

79. Viewed in that light, the agreements would not appear to have a high complementarity of actions; i.e., it is not readily apparent how project activities relating to chemicals *per se* under the two agreements could together satisfy or bring added value toward an overarching policy objective shared by both agreements.

80. Yet some of the capacity building and institutional strengthening initiatives supported by the Multilateral Fund are similar to those needed under the Rotterdam Convention. The Fund directly supports National Ozone Offices in 139 developing countries. These offices facilitate technology transfer and capacity building in such areas as (most recently) trade. For example, some regions organize joint workshops with the Ozone Offices and customs officials of each party in those regions to discuss trade as it relates to illegal trafficking of ODS and to the licensing systems for import and export of ODS required under the Protocol. This kind of activity has a potentially high level of complementarity with the Rotterdam Convention, because it may ultimately involve some of the same officials (e.g., customs, trade, and administrative law officials) and similar procedures and technical needs (e.g., licensing and permitting, packaging and labeling, enforcement against illegal trafficking, etc.) required under the Rotterdam prior informed consent procedure.

81. In light of the complementarity of these activities, the additional, incremental costs of adding Rotterdam-related technical assistance to the activities of the Multilateral Fund may be modest. This study does not attempt to determine the political feasibility of asking the Multilateral Fund to serve as the financial mechanism for the Rotterdam Convention. An important point to note, however, is that countries with economies in transition are not eligible to receive benefits under the Multilateral Fund; instead, they are eligible to receive assistance under the ozone focal area of the Global Environment Facility.

82. An additional question is whether the *model* represented by the Multilateral Fund—i.e., a stand alone financial mechanism with mandatory additional contributions—would well serve the Rotterdam Convention. The advantages of the Fund discussed above were indeed attractive to many countries during negotiations leading to the Rio Conference and adoption of the Climate Convention and Convention on Biological Diversity. However, as recounted below in section 4.3.2, donor states have been unwilling to replicate a mandatory stand alone model for additional MEAs; instead, they agreed to establish the GEF with its focal areas approach. Since that time (1991), no new stand alone, mandatory financial mechanism has been established for any global MEA, nor has there been an expansion or creation of an additional mechanism within UNEP.

83. In terms of political feasibility, therefore, it may not be realistic to propose the creation of a new stand alone financial mechanism with mandatory contributions solely for the Rotterdam Convention. Yet the stand alone, mandatory model could be well-suited, both technically and practically, to a thematic cluster of chemicals agreements. Alternatively, such a thematic cluster may also be well-served by a new or expanded GEF focal area.

4.3. Multipurpose Operational Entity: The Global Environment Facility

84. The GEF serves as the operational entity for several major multilateral environmental agreements. As such, it is the only multipurpose, multi-convention financing facility for MEAs.[30]

4.3.1. Purpose and approach

85. The GEF operates "as a mechanism for international cooperation for the purpose of providing new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits."[31] The GEF funds the agreed incremental costs in six focal areas: climate, biological diversity, international waters, ozone layer depletion,[32] POPs, and land degradation (primarily desertification and deforestation).

86. The GEF operates the financial mechanisms for the Climate Convention and the Convention on Biological Diversity "on an interim basis." It is also the principal entity entrusted on an interim basis with operation of the Stockholm Convention financial mechanism. In all cases, these financial mechanisms exist to provide adequate and sustainable financial resources to developing country parties to assist them in their implementation of convention provisions. The GEF is now also "a financial mechanism" of the Desertification Convention.[33] This new type of convention-GEF relationship is intended to be formalized under a memorandum of understanding in 2005.[34]

4.3.2. Establishment of the GEF

87. During the time leading up to the 1992 Rio Conference, many stakeholders argued in favor of North-South financial mechanisms to help southern countries implement the Climate and Biological Diversity Conventions that were then being negotiated. These demands were based on the model of the Montreal Protocol Multilateral Fund. However,

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[30] *Second Overall Performance Study of GEF*, GEF/A.2/4, at 46 (2002) [hereinafter GEF OPS2].
[31] GEF Instrument, para. 2.
[32] Economies in transition countries are not eligible to receive financial support from the Multilateral Fund of the Montreal Protocol. Accordingly, the GEF ozone depletion focal area involves "support to the economies in transition in Eastern Europe and Central Asia for mitigating ozone layer depletion (for countries not covered under the Montreal Protocol's financial mechanism)." GEF OPS2, at 5. Under agreement with the Multilateral Fund Executive Committee, the GEF applies Multilateral Fund guidelines to the GEF ozone focal area.
[33] UNCCD, Decision 6/COP.6, ICCD/COP(6)/11/Add.1 at 17 (2003).
[34] GEF Council, *Institutional Relations*, para. 33, GEF/C.24.7 (2004).

most donor countries objected to the notion of creating a new financial mechanism for every convention, in part because they worried about the potential for fragmentation and proliferation of uncoordinated financing institutions and strategies. Proposals for a joint funding mechanism thus emerged.[35]

88. The GEF was established in 1991 as a pilot program. Following the adoption of Agenda 21, the Climate Convention, and the Biological Diversity Convention at the Rio Conference, negotiations to restructure the GEF commenced, culminating in the 1994 adoption of the Instrument for the Establishment of the Restructured Global Environment Facility. The GEF Instrument was amended in 2002 to add land degradation and POPs as GEF focal areas, and to place operation of the Stockholm Convention financial mechanism within the GEF mandate.

4.3.3. Administration

89. Any State member of the United Nations or any UN specialized agency may become a participant in the GEF. All participants meet as the *Assembly*. Though the GEF Instrument calls for the Assembly to meet every three years, in practice, it has met every four year to coincide with the Replenishment cycle. The Assembly reviews general policies and operations of the GEF, and may approve amendments to the GEF Instrument.

90. The *Council* exercises most of the key decision-making and policy guidance powers of the GEF. The Council consists of 32 members representing constituency groupings and weighted between recipient and donor countries. The Council acts as the focal point for the conventions.

91. The GEF *Secretariat* carries out administrative functions. It is accountable to the Council and is headed by a Chief Executive Officer (CEO), who also serves as the Council Chair. The GEF Secretariat receives administrative support from the World Bank, but operates in a "functionally independent" manner.[36]

92. Three implementing agencies—UNDP, UNEP, and the World Bank—play key roles in identifying, developing, and managing GEF projects on the ground.[37] Additionally, seven regional development banks and intergovernmental organizations contribute to the implementation of GEF projects as "executing agencies with expanded opportunities."[38]

93. The core budget for the GEF Secretariat for 2002-03 was US $8.26 million.

[35] GEF OPS2, 3-4.
[36] GEF Instrument, para. 21.
[37] *Id.* at para. 22.
[38] GEF website, *Executing Agencies* (undated), *at* http://gefweb.org/Partners/Exe_Agencies/exe_agencies html (last viewed on Apr. 19, 2005).

4.3.4. Arrangements with the Conventions

94. Paragraph 6 of the GEF Instrument commits the GEF to operate the financial mechanisms of the Climate, Biological Diversity, and Stockholm Conventions on an interim basis, and to continue to serve if requested to do so by the respective Conferences of the Parties.

95. For each of these conventions, the GEF enters into a Memorandum of Understanding (MOU) with the Conference of the Parties that sets out the relationship between the COP and the GEF. The COP and GEF Council each adopt the MOU. The MOU elaborates how the GEF will take into consideration the policies, strategies, and priorities agreed upon by the COP. The MOU may contain sections on, *inter alia*:

(a) guidance from the COP;

(b) how the GEF will conform with the COP's guidance;

(c) reporting from the GEF Council to the COP;

(d) monitoring and evaluation regarding the effectiveness of the financial mechanism; and

(e) cooperation between the GEF and convention secretariats.

96. In addition to the MOUs, the GEF operationalizes the guidance received from the COPs by preparing an "Operational Program" for each focal area.[39] The Operational Program provides the framework to guide the development of activities that are eligible for GEF project funding. Each Operational Program may contain information about:

(a) guidance to the GEF from the convention;

(b) guiding principles;

(c) program objectives and outcomes;

(d) eligible activities;

(e) financing; and

(f) monitoring and evaluation.[40]

4.3.5. Source of funds

97. The GEF is funded by contributions to the GEF Trust Fund from Contributing Participants through a process called the "Replenishment." The Replenishment is negotiated on a four-year cycle. Both the total amount of each Replenishment and the

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[39] Other operational guidelines have also been prepared to facilitate access to GEF funds. For example, UNEP, under the auspices of the POPs INC, worked with the GEF to develop guidance for assistance related to preparation of National Implementation Plans for the Stockholm Convention.
[40] *See, e.g.*, *Operational Program on Persistent Organic Pollutants [Draft] (OP #14)*, GEF Council, GEF/C.22/Inf.4 (2003).

burden sharing agreement among the Contributing Participants are subject to the political negotiating process.

98. Contributions are “mandatory” in the sense that each of the conventions requires developed country parties to provide new and additional funds to assist developing countries in meeting the agreed full incremental costs of implementing their convention obligations. However, the conventions do not specify how those contributions will be decided.

99. Thirty-two donor countries pledged US $3 billion in 2002 to the third Replenishment, which funds operations between 2002 and 2006. The majority of funds pledged were from OECD countries, but the Contributing Participants also included a few developing countries and countries with economies in transition.

100. Replenishment funds are allocated among the different GEF focal areas on the basis of a programming document that is first drafted by the GEF as a technical recommendation, and then negotiated. There is no “earmarking” of funds by individual contributing states to specific focal areas or projects. The allocations for the third Replenishment were approximately:

Biological Diversity:	US $960 million
Climate Change:	960 million
International Waters:	430 million
Ozone Depletion:	50 million
POPs:	250 million
Land Degradation:	250 million

4.3.6. Obtaining assistance

4.3.6.1 Eligibility requirements

101. GEF grants that are made available through the financial mechanisms of the conventions “shall be in conformity with the eligibility criteria decided” by the COPs under the agreement (i.e., the MOU) made with each convention.[41] Generally speaking, countries may be eligible to receive GEF funding in two ways. Developing countries that have ratified the relevant treaty are eligible to propose projects. Other countries, primarily those with economies in transition, are eligible if the country is a party to the appropriate treaty and is eligible to borrow from the World Bank or receive technical assistance grants from UNDP.[42]

[41] GEF Instrument, para. 9(a).
[42] GEF website, *Operational Policies*: *Eligibility Criteria & Project Cycle* (undated), *at* http://thegef.org/Operational_Policies/Eligibility_Criteria/eligibility_criteria html (last viewed Apr.19, 2005).

4.3.6.2 Application procedures

102. GEF funds are awarded in response to project proposals. The GEF posts instructions for submitting proposals on its website.[43]

4.3.6.3 Accessing different levels of funding

103. The GEF provides grants for four types of projects, each with different grant amount ranges and approval requirements:

- *Full-sized projects* are those receiving more than one million US dollars in GEF grants. They must go through each step of the GEF Project Cycle and be approved by the GEF Council.
- *Medium-sized projects* may receive a maximum of $1 million in GEF funds. They are processed in an expedited manner, including one-step approval by the GEF CEO, after they have been circulated to the Council.
- *Enabling activity projects* provide financing for preparation of a plan, strategy, program, or report to fulfill reporting commitments under one of the conventions. Depending on the convention, they may receive up to $500,000 in GEF grants with expedited processing and approval.[44]
- The *Small Grants Program* (SGP) provides up to $50,000 support for community-level initiatives that contribute to environmental benefits related to the GEF focal areas. Grants are made directly to community-based organizations (CBOs) and non-governmental organizations (NGOs) in developing countries, and are approved by the SGP at the national level, administered by UNDP.[45]

104. Projects involving developing countries are generally considered as being funded under the convention financial mechanisms. Under the Climate and Biological Diversity Conventions, countries with economies in transition are not eligible to receive funding under the financial mechanisms.[46] Instead, climate and biological diversity focal area funds that are outside the financial mechanisms can be made available for these countries, provided that they are used in a manner consistent with the convention.

4.3.7. Accountability; monitoring and evaluation

105. In all cases, the GEF is to be fully accountable to the conventions for which it operates a financial mechanism. Paragraph 6 of the GEF Instrument provides that the

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[43] GEF website, *Operational Policies, Templates and Guidelines* (undated), *at* http://thegef.org/Operational_Policies/Eligibility_Criteria/templates html (last viewed on Apr. 19, 2005).
[44] *GEF Project Cycle: An Update,* GEF/C.22/Inf.9, at 4-5 (2003).
[45] GEF Small Grants Programme website, *Apply for an SGP Grant* (2004), *at* http://sgp.undp.org/index.cfm?module=ActiveWeb&page=WebPage&s=ApplyforanSGPGrant.
[46] *See, e.g.*, UNFCCC, art. 4.3. This restriction does not apply to the Stockholm Convention financial mechanism, which is available for both developing and transition Parties. *See* Stockholm Convention, art. 13.6.

"GEF shall function under the guidance, and be accountable to, the Conferences of the Parties which shall decide on policies, program priorities and eligibility criteria for the purposes of the conventions."

106. The GEF Office of Monitoring and Evaluation (M&E Office) is an independent office that reports directly to the GEF Council. The M&E Office's objectives are to:

- independently monitor and evaluate GEF effectiveness;
- provide a basis for decision-making;
- promote accountability; and
- promote knowledge management and provide feedback.[47]

107. The M&E Office periodically oversees the preparation of in-depth "overall performance studies."[48] These studies include evaluation of the GEF's relations with the conventions. Additionally, the convention COPs conduct their own monitoring and evaluation of their financial mechanisms, taking into account the work of the GEF M&E Office.

4.3.8. Advantages and disadvantages[49]

108. The GEF is the major source of funding dedicated to assisting developing countries to meet the incremental costs of implementing the provisions of global environmental agreements. It was established as a compromise in response to demands for new, independent financial mechanisms for each of the Biological Diversity and Climate Conventions. Since then, POPs and land degradation (desertification) have been added as GEF focal areas. No new financing facilities or mechanisms have been created that receive mandatory contributions from donor parties to assist developing country parties in their implementation of a global MEA. While predictions of political outcomes can be fraught with unreliability, it may be safe to say that, for the foreseeable future, the political feasibility of parties to a global MEA creating such a new, independent, and mandatory facility is slim. Thus, for MEAs such as the Rotterdam Convention that are considering options for sustained, reliable streams of new and additional finance to assist developing country parties, the GEF may present the most realistic opportunity for realizing that objective.

109. After its initial, unsteady steps during the pilot phase, the GEF has generally become an effective and credible facility for funding activities that deliver significant global environmental benefits. One source of complexity and inefficiency in the GEF is a result of the way it was created. While it serves as the operational entity for convention financial mechanisms, it does not develop or implement projects. That is the

[47] Global Environment Facility, *Revised Terms of Reference for an Independent Monitoring and Evaluation Unit*, at 2 (2003).
[48] *See* Gareth Porter et al., *Global Environment Facility, Study of GEF's Overall Performance* (1998); *see also* GEF OPS2.
[49] Much of the evaluation in this section is based on findings in the Second Overall Performance Study of the GEF (OPS2).

responsibility of the numerous participating UN implementing and executing agencies. Substantial efforts have been made over the years to streamline and integrate their procedures; nevertheless, the GEF inherited many of the weaknesses of these large and sometimes inflexible bureaucracies. Moreover, the continuing struggles between the agencies over access to GEF resources have sometimes resulted in duplication, overlap, delay, and wastes of scarce resources.

110. The GEF has been accountable to the conventions for which it operates financial mechanisms. Its response to convention directives for supporting countries in meeting their treaty requirements has been viewed as satisfactory and pragmatic. The GEF has sometimes had difficulty translating convention guidance into practical operational activities. That has often been because COP guidance (which is the result of complex political processes) can be so broad and general that it may be difficult to respond to in operational terms.

111. The GEF Secretariat has made considerable efforts over the years to increase transparency and accessibility for stakeholders. Significant amounts of information are readily available from the GEF website, which is well-organized and comprehensive. Yet many country stakeholders do not find it easy to understand GEF goals, objectives, and operational modalities, which can lead to misconceptions about the GEF mandate and processes.

112. The fact that the GEF operates the convention financial mechanisms on an “interim basis” reflects, in part, the resistance of many developing countries to the notion that no other sources of multilateral donor country funding may be made available to those financial mechanisms. It also reflects the belief of some that the Replenishment process is incapable of ensuring that (as stated in Article 13 of the Stockholm Convention) “[t]he developed country Parties shall provide new and additional financial resources to enable developing country Parties and Parties with economies in transition to meet the agreed *full incremental costs* of implementing measures which fulfill their obligations under this Convention” (emphasis added).

113. While the Replenishment is essentially a political process and thus subject to political uncertainty, it has resulted in a sustained and slowly but steadily increasing flow of funds to the GEF focal areas. The Replenishment’s four-year cycle provides greater predictability than the annual or biennial budget processes of the conventions and implementing agencies. The main shortcoming of the GEF’s financial resources is that they are relatively modest, given the critical and complex environmental challenges they are being asked to address. It is essential that the expectations of the conventions, including the Rotterdam Convention, realistically correspond to the GEF’s limited resources, or that the conventions work collaboratively with others to increase them.

114. One obvious way to increase GEF resources would be for donor countries to increase their Replenishment contributions. The GEF could also generate larger environmental resources if it were able to raise the ratio of leveraged, private co-finance in the projects it underwrites. Yet the private sector has historically been slow to invest in projects that produce global environmental benefits. In most cases, significantly

expanding such investments may depend on the extent to which the conventions incorporate market mechanisms that provide incentives to attract private investment flows. Setting up the international legal infrastructure needed to support such mechanisms is an ambitious, difficult, and time-consuming undertaking.

115. The existence of the POPs focal area may provide the groundwork for an expanded GEF mandate to serve a cluster of chemicals conventions and processes. In administering the POPs focal area and the Stockholm Convention financial mechanism, the GEF already considers overlaps with the Basel and Rotterdam Conventions, as well as the various regional chemicals agreements. The GEF "Initial Guidelines for Enabling Activities for the Stockholm Convention on Persistent Organic Pollutants" states:

> To the extent that the capacity building needs of countries in their efforts to reduce/eliminate POPs will often address more general chemicals management issues, the GEF, in supporting the POPs Convention, will strengthen the [other chemicals convention] processes related to chemical safety. The GEF would thus catalyze a collective and coordinated response from countries to these global and regional agreements."[50]

116. This policy means that the GEF may fund capacity building needs of the Rotterdam Convention to the extent that they have a nexus with needs related to POPs substances that are listed in the Stockholm Convention. In many (if not most) cases, such capacity building efforts may also strengthen the ability of developing country parties to deal with other non-POPs chemicals that are listed in the Rotterdam Convention. In situations where the Rotterdam-POPs nexus is not clear, the GEF (or another entity) may be able to expand a POPs project to deliver Rotterdam Convention benefits by arranging co-finance that underwrites the Rotterdam component of the project. In many (if not most) of these situations, the incremental costs of obtaining Rotterdam-related benefits could be quite modest.

117. Such co-finance must still be for a project that is, at its core, a POPs project. Moreover, adequate co-finance may sometimes not be available. There could thus be situations when Rotterdam capacity building needs cannot be met through the GEF under the present definition of the POPs focal area. Expanding the GEF focal area to serve a cluster of chemicals conventions and processes, including the Rotterdam Convention, could provide a means of filling this potential financing gap.

118. The Strategic Approach to International Chemicals Management (SAICM) may be a logical forum to initiate discussion of such an expansion. The SAICM is developing an overarching policy strategy to "achieve by 2020 that chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment." At the March 2005 African regional consultation on development of the SAICM, participants noted that achieving the 2020 goal—

[50] *Initial Guidelines for Enabling Activities for the Stockholm Convention on Persistent Organic Pollutants,* GEF Council, GEF/C.17/4, at para. 19 (2001).

> will require that developing countries and countries with economies in transition have access to an existing multilateral financial mechanism or mechanisms that have dedicated new and additional funds to support SAICM implementation[.] . . . Establishment of a GEF chemicals management focal area with new and additional funds may be the most appropriate way forward.[51]

119. A key consideration in determining whether or not the Rotterdam Convention would benefit from an expanded GEF chemicals focal area would be whether the expansion is accompanied by significant new and additional funding. If it is not, then either the GEF's present pool of resources would have to be spread more thinly among the focal areas, or the Stockholm Convention could be faced with having to share with other conventions funds that had previously been dedicated to the POPs financial mechanism.

120. An additional, important consideration is the fact that the GEF already took up the issue of a broader chemicals focal area during its discussions on the 2002 amendments to the GEF Instrument. The question before the GEF Council then was whether the new focal area should be strictly limited to activities under the Stockholm Convention, or whether it should be an "Integrated Chemicals Management, especially Persistent Organic Pollutants" focal area that could potentially allow for a broader approach to chemical safety and persistent toxic substances.[52] At the time, a desire to get the Stockholm Convention "up and running" quickly led the Council to adopt the more limited approach for the new focal area. Because appreciation of the necessity for an integrated approach to international chemicals management appears to be increasing, and because the Stockholm Convention has now entered into force and is being implemented, that 2002 decision may not necessarily preclude consideration of an expanded chemicals focal area in the future.

121. In determining whether or not to pursue the option of an expanded GEF chemicals focal area that includes the Rotterdam Convention, parties may wish to weigh, among other things, the possibility that negotiating and adopting a new, expanded chemicals focal area could be uncertain and could take a long time, and the likelihood that the incremental costs of Rotterdam-related benefits may be relatively modest if those benefits can be obtained through one or more financial mechanisms that already exist.

4.4. Financial Mechanisms Operated by the Global Environment Facility

122. The GEF serves as the interim operational entity for the financial mechanisms of several MEAs, including the Stockholm POPs Convention, the Convention on Biological Diversity, and the Framework Convention on Climate Change.[53] The operational

[51] *Report of the Second African Regional Consultation on the Development of a Strategic Approach to Integrated Chemicals Management*, SAICM/AfRC.2/1, annex II, paras. 4-5 (2005).
[52] *See Note on the Technical Aspects of the Designation of a GEF Focal Area Relating to Persistent Organic Pollutants*, GEF/C.19/Inf.4 (2002).
[53] The GEF has also recently become "a financial mechanism" of the Convention to Combat Desertification (UNCCD). See discussion below, Section 4.5.9.

framework outlined in the previous section about the GEF applies to each of these mechanisms. This section provides basic information about the Stockholm Convention financial mechanism. Additionally, the section reviews the Adaptation Fund of the Kyoto Protocol, which is also operated by the GEF, and which has a different funding arrangement than the convention mechanisms.

4.4.1. The Stockholm Convention on Persistent Organic Pollutants (POPs)

123. The Stockholm Convention protects human health and the environment by restricting the production, use, and trade of persistent organic pollutants (POPs). The GEF is, "on an interim basis, . . . the principal entity entrusted with the operations" of the Convention's financial mechanism.

4.4.1.1 Background: The Stockholm Convention

124. POPs are highly stable compounds that circulate globally through a repeated process of evaporation and deposit, and are transported through the atmosphere and the oceans to regions far away from their original source. They accumulate in the tissue of living organisms, which absorb POPs through food, water, and air. The effects of POPs exposure include birth defects, cancers, and dysfunctional immune and reproductive systems. POPs are also a threat to biodiversity, and even have the potential to cause disruption at the ecosystem level.[54]

125. The Stockholm Convention was adopted 23 May 2001, less than three years after the first meeting of its intergovernmental negotiating committee. The Convention entered into force on May 17, 2004. As of April 2005, it had 98 parties.[55]

4.4.1.2 Basic treaty obligations

126. The Stockholm Convention requires parties to eliminate, or in limited cases severely restrict, production and use of listed pesticides and industrial chemicals. Similarly, import and export of listed substances are prohibited or restricted, except for the purpose of environmentally sound disposal. Exports to non-parties are prohibited unless the non-party meets certain conditions. All permitted exports must be done "taking into account any relevant provisions in existing international prior informed consent instruments." Parties are permitted to register for specific, time-limited exemptions to some of the Convention's production and use prohibitions.

127. Parties are required to take actions to promote application and development of measures to reduce and eliminate releases of listed unintentionally produced POPs, such as dioxins and furans. Parties are obliged to develop strategies to identify, manage, and dispose of POPs wastes. Moreover, they must regulate with the aim of preventing the

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[54] World Bank website, *What are Persistent Organic Pollutants (POPs)?* (2004), *at* http://lnweb18.worldbank.org/ESSD/envext.nsf/50ByDocName/WhatArePOPs (last viewed Apr. 19, 2005).

[55] Stockholm Convention website, *Entry into Force* (2005), *at* http://www.pops.int/documents/signature/signstatus.htm (last viewed May 9, 2005).

production and use of new chemicals that exhibit POPs characteristics. Each party must develop and "endeavour to implement" a national implementation plan setting out how the party will comply with convention requirements.

128. Developed country parties are to provide new and additional financial resources to enable developing country parties and parties with economies in transition to meet the agreed full incremental costs of implementing measures that fulfill their obligations under the Convention.[56]

4.4.1.3 The Stockholm Convention financial mechanism: Purpose

129. The Stockholm Convention financial mechanism is intended to enable developing country parties and parties with economies in transition to meet the agreed full incremental costs of implementing measures that fulfill their obligations under the Convention. It is to provide adequate and sustainable financial resources on a grant or concessional basis.

4.4.1.4 Establishment of the mechanism

130. Article 13 of the Convention established the financial mechanism and provided that its operation "shall be entrusted to one or more entities, including existing international entities as may be decided upon" by the COP. The Convention further appoints the GEF to serve as the principal operational entity on an interim basis, until the COP decides to designate a permanent entity or entities.

4.4.1.5 Administration

131. The GEF Secretariat prepared a draft Memorandum of Understanding (draft MOU) between the GEF and the COP that presented the respective responsibilities of the GEF and COP in the operation of the Stockholm financial mechanism.[57] The draft MOU was considered at the first Stockholm COP in May 2005 and adopted with minor changes.

132. Following the Secretariat's draft MOU, the GEF issued its draft operational program on POPs.[58] The operational program describes the POPs-related activities the GEF would provide funding for, i.e., capacity building, on-the-ground interventions, and targeted research.

4.4.1.6 Obtaining assistance

133. The procedures and guidelines outlined above in Section 4.3.6 on the GEF apply to obtaining assistance from the Stockholm Convention financial mechanism.

[56] Stockholm Convention, art. 13.
[57] *Draft Memorandum of Understanding Between the Council of the Global Environment Facility and the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants,* UNEP/POPS/INC.7/16 (2003).
[58] *Operational Program on Persistent Organic Pollutants [Draft] (OP #14)*, GEF/C.22/Inf.4 (2003).

4.4.1.7 Accountability; monitoring and evaluation

134. As in all of the GEF-operated MEA financial mechanisms, the GEF will be fully accountable to the Stockholm COP. Article 13 of the Stockholm Convention states that the financial mechanism will function in accordance with guidance to be provided by the COP. The GEF must regularly report to the COP on the financial mechanism, and the COP may raise with the GEF Council any matter that may arise from those reports. The COP adopted a guidance document at its first meeting.

135. Article 13 of the Stockholm Convention also calls for the COP to review the effectiveness of the financial mechanism at its second meeting and periodically thereafter. Despite concerns expressed by some parties at COP 1 that an effectiveness review at COP 2 would be premature (because the study upon which the review would be based would have to be arranged immediately after COP 1, and there would thus not be much activity for it to review), parties agreed that a review should take place for the period from when the Convention was opened for signature in 2001 to July 2005. The review will apply specific performance criteria to evaluate the level of funding, the effectiveness of the GEF in its capacity as “principal operational entity,” and the ability of the financial mechanism to respond to the needs of the Convention and the policy guidance of the COP. It will take into account information provided by parties about their experiences with the financial mechanism; the reports of the GEF independent monitoring and evaluation unit; and relevant information from IGOs, NGOs, and other stakeholders.

4.4.1.8 Advantages and disadvantages

136. All of the considerations about the GEF in Section 4.3.8 above apply to this section, including those regarding the applicability of the present POPs focal area to the Rotterdam Convention and the possible expansion of the focal area to serve a cluster of chemicals conventions and processes.

137. By all relevant criteria—including commonality of parties, overlapping technical needs, complementarity of actions, and common chemicals—the Rotterdam and Stockholm Conventions share a high level of overlap. Many Rotterdam Convention chemicals may eventually also be listed under the Stockholm Convention. The general infrastructure and capacity necessary to manage chemicals under the Rotterdam Convention is directly related to infrastructure and capacity needs under the Stockholm Convention. In light of this high level of complementarity and overlap, the additional, incremental costs of adding Rotterdam-related technical assistance to the activities of the Stockholm financial mechanism could be minimal. With the execution of appropriate legal instruments between the Rotterdam and Stockholm COPs and the GEF Council, the Stockholm Convention financial mechanism operated by the GEF could plausibly serve as a financial mechanism for the Rotterdam Convention.

138. Such an approach would still likely require new and additional financial resources. Under the third GEF Replenishment, the POPs focal area allocation is about US $250 million (for the four-year Replenishment cycle). Approximately $70 million of this

amount is budgeted to support developing and economies in transition countries in the preparation of their National Implementation Plans (NIPs) required under the Stockholm Convention. Additionally, implementation of the Convention will place great demands on focal area resources for such critical, resource-intensive activities as the clean-up of stockpiles of obsolete and abandoned POPs pesticides. Thus, the POPs focal area allocation may already be insufficient to meet the demands that may be placed upon it by the Stockholm Convention. Additional demands from the Rotterdam Convention—even if they were quite modest—would likely require proportionally greater commitments from the donor countries.

4.4.2. The Adaptation Fund of the Kyoto Protocol[59]

139. The Adaptation Fund of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC or Climate Convention) is a distinct trust fund of the UNFCCC financial mechanism. Unlike the convention financial mechanisms operated by the GEF, the Adaptation Fund is to be financed through a combination of voluntary contributions and mandatory levies on the Kyoto Protocol's "Clean Development Mechanism" (CDM).

4.4.2.1 Background: The Kyoto Protocol

140. Over the last 150 years of industrialization, the average temperature of the earth's surface has risen 0.6 degrees C. The combination of increased production of greenhouse gasses and deforestation is expected to cause average temperatures to increase by another 1.4 to 5.8 degrees by 2100. These higher temperatures could cause the extinction of numerous plants and animals, melting of polar ice caps, and a greater frequency of extreme weather events, such as severe storms, floods, and droughts.

141. By the 1980s, scientific evidence linking greenhouse gas emissions from human activities to global climate change began to arouse public concern. The United Nations established an Intergovernmental Negotiating Committee, which drafted and adopted the treaty that was opened for signature at the 1992 Rio Earth Summit. The UN Framework Convention on Climate Change (UNFCCC) entered into force on 21 March 1994.

[59] In Decision RC 1/5, the Conference of the Parties to the Rotterdam Convention requested that this financial mechanisms study review, among others, the "Carbon Fund." A number of different "carbon funds" exist. They include, *inter alia*, the World Bank's Prototype Carbon Fund, the Bank's Community Development Carbon Fund, and the Multilateral Carbon Credit Fund of the European Bank for Reconstruction and Development (EBRD).

Regardless which "carbon fund" was intended in RC 1/5, all of the identified funds serve a common purpose: to facilitate investment through the Kyoto Protocol's market-based mechanisms (i.e., joint implementation or the Clean Development Mechanism). In exchange for the investment, the investor expects to receive carbon credits that can ultimately be used by a developed country to help it comply with its Kyoto Protocol emissions target.

Because these funds are premised on the existence of the Kyoto Protocol's market-based mechanisms (to which there is nothing analogous under the Rotterdam Convention), and because these funds are not intended to assist developing countries in their implementation of legal obligations under the Kyoto Protocol, they are not included in this study.

142. Shortly after the Climate Convention entered into force, its parties decided that the commitment of developing countries to “aim” to return their greenhouse gas emissions to 1990 levels by 2000 was inadequate for achieving the Convention’s long-term objective of preventing “dangerous anthropogenic interference with the climate system.”[60] Ensuing negotiations culminated in adoption of the Kyoto Protocol in December 1997. The Protocol entered into force in 2004. In April 2005, it had 148 parties.

4.4.2.2 Basic treaty obligations

143. Under the Kyoto Protocol, developed countries, including economies in transition (collectively known as “Annex I” countries), accepted legally binding limits to their greenhouse gas emissions for the period of 2008-2012. The Protocol provides flexibility to these countries by creating several different emissions trading mechanisms, including the project-based Clean Development Mechanism (CDM). The CDM allows Annex I countries to obtain credit for emissions reductions resulting from investments in project activities in developing countries. Annex I countries may use certified CDM emissions reductions to help them comply with their emissions targets.

144. The Protocol does not establish emissions targets or new reporting obligations for developing country parties. However, it reiterates the need, first expressed in the Climate Convention, for funds to assist developing countries that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation to those adverse effects.[61]

4.4.2.3 The Adaptation Fund: Purpose

145. The Adaptation Fund was created to assist developing country parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.[62]

4.4.2.4 Establishment of the Fund

146. During negotiations on the Kyoto Protocol, there was some concern among developing countries that they could be exploited by emissions trading mechanisms, or that developed countries might avoid changing their emissions trajectories by forcing cheaper emissions reductions in developing countries. Some countries called for guarantees that developing countries would receive a share of the proceeds from the emissions trading mechanisms. The Protocol achieved a compromise by providing that an (unspecified) share of CDM proceeds would assist vulnerable countries to meet their adaptation costs.[63]

[60] Climate Change Secretariat, The Kyoto Protocol to the Convention on Climate Change, *Introduction*, at 1, UNEP/IUC/98/2 (1998).
[61] Kyoto Protocol, art. 11.1.
[62] *Id.* at art. 12.8.
[63] *Id.*

147. The Adaptation Fund was formally approved by the Conference of the Parties to the Climate Convention as part of the overall agreement on the package of rules that were adopted to complete the Kyoto Protocol.[64]

4.4.2.5 Administration

148. Like the other parts of the Climate Convention financial mechanism, the Adaptation Fund is operated by the GEF. The guidance to the operating entity provided under the Climate Convention (including the Memorandum of Understanding between the COP and the GEF) also applies to the Protocol.[65] Additional guidance will be provided by the Protocol's "Conference of the Parties serving as the Meeting of the Parties" (COP/MOP) when it meets for the first time in fall 2005. The Adaptation Fund will not be operative until that time.

149. Procedures regarding recipient eligibility, accountability, and monitoring and evaluation will presumably also be those that already exist for the GEF and the Climate Convention financial mechanism.

4.4.2.6 Source of funds

150. The Adaptation Fund will be financed by a combination of voluntary contributions and mandatory levies. Under the Marrakesh Accords, the Climate Convention COP invited Annex I parties that "intend to ratify the Kyoto Protocol" to make contributions to the fund.[66] This wording was required to accommodate one country that had indicated its intent not to ratify the Protocol and insisted that Convention (i.e., GEF Replenishment funds) and Kyoto Protocol funds not be co-mingled.

151. In addition to voluntary contributions, the Adaptation Fund will receive a levy of 2% of the "certified emissions reductions" issued for a CDM project activity. Project activities in least developed countries are exempt from the levy.[67]

152. It is not clear at this time how much money the adaptation levy will generate. That is due in part to the novelty of the international emissions trading market, the fact that the largest producer of greenhouse gas emissions is not party to the Kyoto Protocol (and thus will not participate in the market), and uncertainty as to whether parties will agree to a second compliance period for the Protocol after the first one ends in 2012. Moreover, it is not known what percent of CDM projects will take place in least developed countries, and thereby be exempt from the levy. Nevertheless, based upon a CDM market estimate prepared for the World Bank, one can conclude that the adaptation levy may generate

[64] *Action Taken by the Conference of Parties at Its Seventh Session*, FCCC/CP/2001/13/Add.1, Decision 10/CP.7 (2002) [hereinafter Marrakesh Accords] (describing the funding under the Kyoto Protocol.
[65] Kyoto Protocol, art. 11.2.
[66] Marrakesh Accords, Decision 10/CP.7, para. 3.
[67] *Id.* at Decision 17/CP/7, para. 15.

resources in the vicinity of US $55 million per year during the compliance period of 2008-2012.[68]

4.4.2.7 Advantages and disadvantages

153. In terms of technical needs, complementarity of actions, and common chemicals, the Kyoto Protocol and the Climate Convention have little overlap with the requirements of the Rotterdam Convention. The main reason that the Adaptation Fund has been included in this study is because it taps proceeds from voluntary activities (the CDM) as a way to assist developing countries. Thus, it represents a novel approach for enhancing financial flows through a global environmental agreement.

154. There are fundamental dissimilarities between the Kyoto Protocol and the Rotterdam Convention that would make application of a CDM/Adaptation Fund-type levy for the Rotterdam Convention infeasible under the Convention's present legal architecture. The Kyoto Protocol sets up a market-based mechanism (the CDM) that is designed, in part, to ease the compliance costs of developed-country parties and that would not exist in the absence of the Protocol. Then the Protocol taxes the mechanism under the authority of the rules that established it.

155. In contrast, while the Rotterdam Convention seeks to regulate (through the prior informed consent procedure) the international market in banned or severely restricted chemicals, the Convention did not create that market. Accordingly, establishing the legal authority and means for the Rotterdam Convention to tax the market would raise far more complex political and technical questions than those that confronted the framers of the Kyoto Protocol when they established the CDM and Adaptation Fund.

156. The question of an international tax to benefit sustainable development objectives has been discussed and debated—primarily among academics and economists—since the 1990s, when proposals for a tax on international currency transactions emerged. While considerable analysis has been conducted on how such a tax might be adopted and implemented at the political, legal, and institutional levels, the proposal has not yet been seriously considered by any multilateral governing body. A similar arrangement has been suggested by some participants in the Strategic Approach to International Chemicals Management (SAICM) process, whereby some form of tax would be imposed upon the international chemicals industry to generate funds to implement the SAICM.

[68] *See* Erik Haites, *Estimating the Market Potential for the Clean Development Mechanism: Review of Models and Lessons Learned*, PCFPlus Report, at 19 (2004). The report concludes that the CDM may generate sales of 250 million tonnes of carbon dioxide reductions per year at $11 per tonne for the period of 2008-2012. A 2% levy on that amount would equal US $55 million per year (250 MtCo2 X $11 X 2%). The report's low range estimate would generate an annual levy of $5.5 million, and its high-range estimate would generate $165 million.

4.5. Coordinating Mechanism: The Global Mechanism of the Convention to Combat Desertification

157. The Global Mechanism (GM) is a coordinating (resource mobilization) mechanism established under the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD or Desertification Convention). The GM is administered by the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations that was established as an international financial institution in 1977.

4.5.1. Background: The Desertification Convention

158. Desertification is the degradation of land in arid, semi-arid, and dry sub-humid areas. It is caused primarily by human activities and climatic variations. It occurs because dryland ecosystems, which cover over one third of the world's land area, are extremely vulnerable to over-exploitation and inappropriate land use. Over 250 million people are directly affected by desertification. In addition, some one billion people in over one hundred countries are at risk. These people include many of the world's poorest, most marginalized, and politically weak citizens.

159. Despite attempts in 1977 by the United Nations Conference on Desertification to adopt a Plan of Action to Combat Desertification, desertification continued to intensify. Recognizing the need for a fresh approach, governments joined together under the UNCCD to promote effective action through local programs and international partnerships.

160. The UNCCD was adopted in Paris on June 17, 1994, and entered into force on December 26, 1996. As of April 2005, it had 191 parties.[69]

4.5.2. Basic treaty obligations

161. The Convention takes a regional, "bottom-up" approach to formulate sustainable development policies. It contains five regional annexes that reflect the different priorities of each region. Parties that are affected by desertification must prioritize and enable desertification and drought policies; establish strategies to combat desertification; address its underlying causes; promote awareness of, and participation in, anti-desertification processes; and strengthen their legal framework for dealing with desertification. They must prepare and implement National Action Programs (NAPs) that identify the causes of desertification and try to mitigate the effects of drought.[70]

162. Developed country parties agree to support the efforts of affected developing country parties by undertaking to mobilize substantial financial resources, promoting the mobilization of new and additional funding through the GEF, and promoting and

[69] UNCCD website, *Status of Ratification and Entry into Force (*2005), *at* http://www.unccd.int/convention/ratif/doeif.php (last viewed April 22, 2005).
[70] UNCCD, art. 10.

facilitating access to appropriate technology and knowledge.[71] Like the Rotterdam Convention, the UNCCD *does not require* developed countries to provide financial resources for developing country implementation of its obligations.

4.5.3. The Global Mechanism: Purpose and approach

163. The Global Mechanism (GM) was established to mobilize and channel substantial financial resources to combat desertification and mitigate drought by increasing the effectiveness and efficiency of existing financial mechanisms.[72] It was created before the land degradation focal area was added to the GEF. The GM serves the following functions:

(a) Collecting and disseminating information;

(b) Analyzing and advising, on request, issues related to financial assistance;

(c) Promoting actions leading to co-operation and co-ordination; and

(d) Mobilizing and channeling financial resources.[73]

164. Although originally conceived as a mechanism that would position itself at the intersection of supply from donor countries and demand from affected developing countries, the GM is generally perceived as having chosen instead to focus on the demand side. It has done this by trying to improve the policy context in affected developing countries to create conditions that would be more attractive to prospective donors.[74]

165. The GM has supported its demand-side focus in part through the provision of "catalytic resources" from its own budget. These "facilitation grants" assist affected developing countries in the preparation of their National Action Programs. They are intended to serve as seed funding that helps create conditions for other development partners to contribute project funding.[75]

4.5.4. Establishment of the Global Mechanism

166. The GM was established under Article 21 of the UNCCD. This article was initially viewed as the most contentious in the Convention. While the G-77 strongly supported a

[71] *Id.* arts. 19, 20.
[72] *Id.* art. 4.
[73] *Action Taken by the Conference of Parties at Its First Session*, ICCD/COP(1)/11/Add.1, Decision 24 (1997). These functions were further elaborated in the Operational Strategy for the GM. *See Global Mechanism of the United Nations Convention to Combat Desertification,* Operational Strategy for the Global Mechanism of the United Nations Convention to Combat Desertification, ICCD/COP(3)/CRP.3 (1999).
[74] *Global Mechanism*: *Review, Pursuant to Article 21, paragraph 7, of the Convention, of the Policies, Operational Modalities and Activities of the Global Mechanism, and the Provision of Guidance to It,* Committee for the Review of the Implementation of the Convention, ICCD/CRIC(2)/5, paras 12, 52 (2003) [hereinafter Independent Evaluation of the Global Mechanism].
[75] *Id.* at para. 21; *see also* Global Mechanism, *Mobilizing Resources to Combat Land Degradation and Poverty* (2000).

fund with mandatory contributions, developed countries were divided on the establishment of a new institution. Instead, they stressed the need for improved management, mobilization, and coordination of existing funds. Negotiations on Article 21 remained deadlocked until establishment of a coordinating mechanism was suggested in which an existing organization would operationalize a "Global Mechanism."[76]

167. At the First Conference of the Parties, meeting in Rome in 1997, the COP selected the International Fund for Agricultural Development (IFAD), an intergovernmental organization with 164 member states, to operate and house the GM.[77] The GM began to function in late 1998, but its staff resources were not fully deployed until 2002.[78]

4.5.5. Administration

168. The Global Mechanism retains a separate identity within IFAD. The relationship between IFAD and the UNCCD COP is spelled out in a Memorandum of Understanding adopted at COP 3.[79]

169. A *Facilitation Committee* provides support and advice to the GM and allows for collaborative institutional arrangements between the GM and those institutions with relevant technical and financial expertise.[80] Originally comprised of IFAD, UNDP, and the World Bank, the Committee now has several other members, including regional development banks, the GEF, the Food and Agriculture Organization (FAO), UNEP, and other intergovernmental organizations.

170. The GM is led by a *Managing Director* who is nominated by UNDP and appointed by the President of IFAD. The Managing Director is responsible for preparing the GM program of work and budget, and otherwise overseeing the administrative operations of the GM. The Managing Director is expected to collaborate with the Convention's Executive Secretary to ensure the continuity and coherence between the programs of IFAD and the Convention.[81]

171. For the 2004-05 biennium, the UNCCD budgeted US $3.7 million towards GM administration and operations.

4.5.6. Obtaining assistance

172. The UNCCD's Article 7 stipulates that, in implementing the Convention, parties shall give priority to affected African country parties. However, affected parties from other regions are eligible to receive assistance from the GM upon request.

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[76] Earth Negotiations Bulletin, *Article 21: Financial Mechanisms* (undated), *at* http://www.iisd.ca/vol04/0455027e.html.
[77] Decision 24/COP.1, ICCD/COP(1)/11/Add.1 (1997).
[78] Independent Evaluation of the Global Mechanism, para. 14.
[79] *Global Mechanism: Consideration of, With a View to Adopting, the Revised Draft Memorandum of Understanding Between the Conference of the Parties and the International Fund for Agricultural Development*, ICCD/COP(3)/10 (1999) [hereinafter UNCCD-IFAD Revised Draft MOU].
[80] Decision 25/COP.1, ICCD/COP(1)/11/Add.1 (1997).
[81] UNCCD-IFAD Revised Draft MOU, Part IV.

173. The GM provides access to a list of potential funding sources (including bilateral and multilateral agencies, foundations, NGOs, private sector entities, and research and academic institutions) to which an applicant can apply. The UNCCD website contains a Financial Information Engine on Land Degradation (FIELD), which is an interactive, on-line search engine to facilitate the identification of potential funders, projects, and related data.[82]

4.5.7. Source of funds

174. The costs of GM operations that relate to the services it renders, including the provision of facilitation grants, are covered primarily by voluntary contributions from parties, contributions from the GM host (IFAD), and contributions from the other financial institutions of the Facilitation Committee. Parties contributed US $2.39 million in 2003, with similar amounts expected in 2004.[83] IFAD approved a grant to the GM of US $2.5 million for 2004-2005,[84] while the World Bank pledged $1.25 million.

175. Because the GM is a resource mobilization mechanism that is not primarily responsible for providing project funding, it is difficult to quantify the GM's direct effect on financial assistance flows to affected developing country parties. However, the 2003 independent evaluation of the GM concluded that "five years after the effective creation of the GM, there has been no increase in the channeling of financial flows toward desertification-related activities in affected developing countries."[85] Among the reasons cited in the review for the stagnation of overseas development aid (ODA) flows toward drylands were that the UNCCD does not call expressly for new and additional resources, the GM is only one of many mechanisms for channeling aid flows toward development activities in drylands, and the apparently detrimental perception that the UNCCD is primarily an "environmental" convention rather than a sustainable development convention.[86]

4.5.8. Accountability; monitoring and evaluation

176. The Convention provides that the Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it.[87] The chain of accountability runs from the Managing Director to the IFAD President to the COP. The Managing Director submits periodic reports to the COP on behalf of the IFAD President. The COP provides policy and operational guidance as necessary. The IFAD

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[82] Global Mechanism website, *Financial Information on Land Degradation: Funders* (2001), *at* http://www.gm-unccd.org/FIELD/Funds htm.
[83] *Report of the 12th Meeting of the Facilitation Committee of the Global Mechanism of the United Nations Convention to Combat Desertification* (2004).
[84] In its revised proposal to the COP to host the GM, IFAD offered to provide US $100 million from its lending program in support to UNCCD processes. The 2003 independent evaluation of the GM found that IFAD had not "fully deployed" its proposal. *See* Independent Evaluation of the Global Mechanism, at para 40.
[85] *Id.* at para. 30.
[86] *Id.* at paras. 31-36.
[87] UNCCD, art. 21.4.

President must provide the COP with an audited financial statement of the Core Budget as soon as practicable following the end of the financial year.[88]

177. The Convention's Article 7 required the COP to review, at its third session, the policies, operational modalities, and activities of the Global Mechanism. On the basis of that review, the COP decided to conduct an additional review at COP 6, which was based significantly upon an independent evaluation of the GM requested by the President of COP 5.[89]

178. The independent evaluation recommended that the GM rethink its choice to focus on the demand side of financial resource mobilization. The evaluation concluded that this focus had resulted in the GM developing few activities in the donor community, and almost no activities with non-ODA/non-multilateral sources; thus, the GM had failed to mobilize new sources of funding.[90] The independent evaluation led the COP to request the GM to focus mainly on its primary role of mobilizing financial resources rather than providing technical advice on project design.[91]

4.5.9. The UNCCD and the GEF

179. The COP also decided to accept the GEF as "a financial mechanism" of the UNCCD and to commence arrangements to establish a working relationship with the GEF.[92] (In fact, the GEF is the only *financial* mechanism for the Desertification Convention; the Global Mechanism is a *coordinating*, or *resource mobilization*, mechanism—not a true financial mechanism.) The reason this "a financial mechanism" formulation is used, instead of the "operational entity of the financial mechanism" approach of the other conventions, is due to the language of the UNCCD, which did not define a financial mechanism, but instead asks its parties to "promote the availability of financial mechanisms."[93]

180. The extent to which a GEF financial mechanism for the UNCCD may differ from the operational arrangements between the GEF and the Stockholm, Biological Diversity, and Climate Conventions will not be clear until the UNCCD and GEF finalize a memorandum of understanding that codifies the terms of their relationship. One important, practical difference has emerged. Because Articles 20 and 21 of the UNCCD establish a role for the GEF of funding the agreed incremental costs of desertification-related programs, and because the GEF is one of several possible financial mechanisms referred to in the Convention, the GEF has concluded that it is not appropriate to provide financing to developing countries for Convention enabling activities.[94] Nevertheless, the GEF Council has also stated that the elaboration of action plans and national reports (which are usually viewed as enabling activities) may be considered as components of

[88] UNCCD-IFAD Revised Draft MOU, Part III.
[89] *See* Independent Evaluation of the Global Mechanism.
[90] *Id.* at 2, Summary.
[91] COP 6 Report, Decision 5/COP.6, para. 1, ICCD/COP(6)/11/Add.1 (2003).
[92] Decision 6/COP.6.
[93] UNCCD, art. 21.1.
[94] *Scope and Coherence of the Land Degradation Activities in the GEF*, paras. 18-20, GEF/C.24/6 (2004).

capacity building projects eligible to be funded under the Sustainable Land Management Operational Program.[95]

4.5.10. Advantages and disadvantages

181. The Desertification Convention has a very low overlap of technical needs and complementarity of actions with the Rotterdam Convention. Hence, the Global Mechanism should be considered not as a possible mechanism to be used by the Rotterdam Convention, but for its value, if any, as a model coordinating or resource mobilization mechanism.

182. As summarized in the independent evaluation discussed above, the GM has not been successful in mobilizing new sources of funding. Part of this failure may be due to the GM's misconceived strategic focus, and part to the historic unwillingness of the donor community to increase ODA to combat desertification. This situation appears to be changing, now that the new GEF land degradation focal area has been established, and now that the COP has requested the GM to focus mainly on fostering the supply side of bilateral and multilateral finance, including by identifying sources of co-finance for GEF projects.

183. The results of these developments could demonstrate the value of establishing a coordinating mechanism to complement the existence of a separate, reliable source of project finance (such as the GEF). However, because the GEF also assists to some extent in trying to identify and arrange project co-finance, a stand alone coordinating mechanism coupled with the GEF could result in duplication or inefficiencies of effort if their respective roles and responsibilities are not clearly defined. Provided the GEF and GM do function in a complementary fashion, then the GM could provide an advantage compared to the financial mechanisms of the Biological Diversity, Climate, and POPs Conventions, because it could augment the GEF's catalytic role and help mobilize the substantial financial resources that will be needed in addition to those provided under the GEF's land degradation focal area.

184. The experience of the Global Mechanism also demonstrates that, in the absence of dependable, adequate funding, a coordinating mechanism alone may fail to generate the financial flows necessary to assist developing country parties sufficiently in their implementation of the Rotterdam Convention.

[95] Joint Summary of the Chairs, GEF Council Meeting, May 14-16, 2003, para. 12 (2003).

5. Options for Consideration by the Parties at COP 2

185. This study has identified a representative sampling of financial mechanisms in multilateral environmental agreements. The study has provided background on how and why each mechanism was established, a summary of how each mechanism works, and an evaluation of some of the advantages and disadvantages (and in turn, the suitability) of each mechanism as a possible option for the Rotterdam Convention.

Model/Type	Mechanism Name
1. Stand alone funding mechanism, voluntary contributions	Basel Convention Technical Cooperation Trust Fund
2. Stand alone funding mechanism, mandatory contributions	Montreal Protocol Multilateral Fund
3. Multipurpose operational entity (the GEF), mandatory contributions	Stockholm Convention Financial Mechanism
4. Multipurpose operational entity (the GEF), voluntary contributions and mandatory levy	Kyoto Protocol Adaptation Fund
5. Coordinating (resource mobilization) mechanism	Desertification Convention Global Mechanism

186. Based upon the evaluations of advantages and disadvantages for each mechanism contained in Part 4 of the study, this Part summarizes options for a financial mechanism that the Conference of the Parties to the Rotterdam Convention may wish to consider at its next meeting. An important factor in such considerations will be the estimation of financial resources necessary to enable developing countries to implement adequately the provisions of the Convention. Estimating these resource needs is beyond the scope of this study. However, it should be noted that the resource needs may change over time, as the Convention matures from an initial phase of establishing procedures, guidelines, and implementation plans to a later phase of actually implementing them at the regional and national levels. Moreover, while the Rotterdam Convention's resource needs may appear to be significant when viewed in isolation, their incremental costs may be very modest if they are considered within the scope of needs under other chemicals management agreements, such as the Stockholm Convention. A careful estimate of future resource needs will be critical to the integrity of any decision on options for a financial mechanism for the Convention.

187. Among other additional considerations, the extent to which a donor country already provides relevant assistance through bilateral or other channels may complicate that country's views of the necessity or desirability of contributing to a distinct, multilateral financial mechanism, because the donor may have more control over bilateral assistance, and the donor may thus believe that such assistance is more efficient, productive, or accountable than multilateral assistance might be. Also, the degree to which donors earmark funds could complicate the accurate estimation of future resource needs.

188. The nine options below are presented in three categories. The first category is "existing legal framework" options that can likely be achieved within the Rotterdam Convention's currently existing framework of relevant legal instruments. The second category is "existing outside institution" options that could be achieved without the necessity of creating a new institution or mechanism. Under these options, the Rotterdam Convention would rely upon a financial mechanism or operational entity that already exists outside of the Convention. The final category of options would require the creation of a new institution or legal framework. The first category would likely be the easiest set of options to adopt and implement, while the third category would probably be the most difficult. The study briefly summarizes potential advantages and disadvantages of each option.

5.1. "Existing Legal Framework" Options

189. Either one or two of these options could be taken, or all three could be implemented as a package.

Option 1: Continue the status quo

190. Parties could choose to do nothing other than utilize the special voluntary trust fund that has already been established. Advantages:

- Requires no additional effort beyond whatever effort is already committed to administer the special fund;
- Saves time and money that would be needed to consider and negotiate additional measures.

Disadvantages:

- Fails to address the perceived shortcomings that led to the adoption of Decision RC-1/5, unless funding is increased;
- Like the Basel Convention Technical Cooperation Trust Fund, may provide only limited resources for mostly earmarked activities.

Option 2: Urge the GEF to include more Rotterdam-related activities under the POPs focal area

191. Parties could carry through on Decision RC-1/14 by urging the GEF to more aggressively and proactively consider including Rotterdam-related activities under the current POPs focal area.

Advantages:

- The GEF has already expressed its desire to do this;
- The commitment is already there for areas that support POPs work or overlap directly with it;
- Could achieve Rotterdam-related benefits at low incremental cost.

Disadvantages:

- Projects would be limited to those with a POPs nexus;
- Would have to be paid for out of existing POPs focal area funds or co-finance, which could be difficult or unreliable to obtain, unless overall funding to the POPs focal area is increased.

Option 3: Enhance the voluntary special trust fund to operate as a coordinating mechanism

192. Parties could expand the terms of reference for the voluntary special trust fund so it also operates as a coordinating mechanism that can work with the GEF, multilateral and bilateral implementing agencies, and other potential funding sources to identify and procure funding, including co-finance that allows POPs, Basel, Montreal Protocol, and other projects to obtain additional Rotterdam benefits.

Advantages:

- Can probably be accomplished within the existing legal framework of the Rotterdam Convention;
- Could result in the procurement of greater financial resources, especially co-finance, than may be available through the voluntary special trust fund as it is presently conceived;
- Could take advantage of the probability that many projects conducted under other MEAs could achieve Rotterdam-related benefits at low incremental costs.

Disadvantages:

- Administration may require significant human resources and time;
- May be difficult to determine extent to which specific efforts produce results;

- Could result in duplication or inefficiencies of effort if the respective roles and responsibilities of the coordinating mechanism and the GEF are not clearly defined.

5.2. "Existing Outside Institution" Options

193. Under these three options, the Rotterdam Convention would avoid the necessity of creating a new institution or mechanism by relying upon a financial mechanism or operational entity that already exists outside of the Convention.

Option 4: Use the Montreal Protocol Multilateral Fund

194. Parties could request the Multilateral Fund to serve as the operational entity for a Rotterdam Convention financial mechanism.

Advantages:

- Would take advantage of the overlap between the Montreal Protocol and the Rotterdam Convention of capacity building needs related to import, export, and illegal trafficking of restricted and banned substances;
- Could assist Rotterdam developing country parties and achieve additional global environmental benefits at a relatively modest incremental cost.

Disadvantages:

- Could provoke a reflexive, negative response from governments and other stakeholders because the Montreal Protocol is often not considered a "chemicals" convention;
- Areas where there are overlapping activities between the two conventions are limited and the National Ozone Offices are generally not placed appropriately within a chemicals management framework;
- By addressing Rotterdam finance needs related to customs and illegal import, may provide only a partial solution to overall needs—such a partial solution could lessen the willingness of some governments to consider a more holistic approach (such as greater financing integration between the Rotterdam, Basel, and Stockholm Conventions; regional chemicals conventions; and the SAICM);
- Would require a commitment from governments and/or other funding sources to provide the additional financial resources needed to achieve incremental Rotterdam Convention benefits;
- Would presumably require a change to the Multilateral Fund's terms of reference.

Option 5: Use the Stockholm Convention financial mechanism

195. Parties could request the Stockholm Convention to allow its financial mechanism to also serve as the financial mechanism for the Rotterdam Convention.

Advantages:

- Would allow Rotterdam parties to avoid taking the legal measures (e.g., amendment of the Convention) that could be necessary to establish a Rotterdam financial mechanism;
- Would take advantage of the high level of complementarity between the two conventions and would thus obtain additional environmental benefits at a relatively low incremental cost;
- Would allow the Rotterdam Convention to tap into the GEF POPs focal area funds.

Disadvantages:

- Would require incorporation into the Stockholm financial mechanism of some considerations that are not directly related to POPs, which may not be acceptable to Stockholm parties;
- Would require the Stockholm Convention and GEF Council to revise their draft Memorandum of Understanding and the POPs Operational Program;
- Could result in the Stockholm financial mechanism "sharing" its scare resources (to pay for Rotterdam benefits) unless donor countries agree to cover the (modest) incremental costs by increasing the POPs focal area allocation in the next GEF replenishment.

Option 6: Expand the existing GEF POPs focal area

196. Governments could decide to expand the existing GEF POPs focal area to serve a cluster of chemicals conventions and processes.

Advantages:

- Would reflect the fact that chemicals issues tend to be inter-related and cannot adequately be dealt with in isolation;
- Would be a major step towards achieving integration of international chemicals management efforts;
- Could provide a sustained, dependable funding source to assist developing countries and economies in transition in their chemicals management efforts, including implementation of the Rotterdam Convention;
- Would position the GEF to realize its goal to "catalyze a collective and coordinated response from countries to . . . global and regional [chemicals] agreements";

- Could optimize efficiency and economy of scale by facilitating the development of cross-cutting projects that are not dependent on outside co-finance to achieve non-POPs and POPs benefits.

Disadvantages:

- Could diffuse the focus of the current targeted arrangements, especially for the Stockholm Convention;
- Would require possibly complex negotiations between the conventions, the GEF Council, UNEP and the other implementing agencies, donor and recipient governments, and other stakeholders;
- Could require resource-intensive re-structuring and/or re-thinking among relevant institutional and bureaucratic constituencies of the GEF, implementing and executing agencies, secretariats, etc. to overcome the resistance or inertia towards change that such constituencies may sometimes have;
- Would require new and additional funding beyond the level that is presently allocated to the POPs focal area;
- Was considered by the GEF Council in 2002 as an option for the new POPs focal area, but not adopted;
- Would presumably require revising various terms-of-reference instruments.

5.3. New Institution or Legal Framework Options

197. Under either of these three options, governments would need to establish new international institutions or legal frameworks.

Option 7: Establish a Rotterdam Convention financial mechanism

198. Parties could establish a new, mandatory stand alone financial mechanism for the Rotterdam Convention.

Advantages:

- Funds would be targeted directly toward Rotterdam Convention needs;
- Could provide a source of sustained, dependable financial assistance specifically for the benefit of Rotterdam Convention developing country and economy in transition parties;
- Depending on the operational arrangements, would allow administrative staff of the mechanism to focus exclusively on Rotterdam implementation issues, thereby developing deeper expertise in, and fidelity towards, such issues;

- Would allow the mechanism to deal with the implementing and executing agencies with a single, unified sense of mission.

Disadvantages:

- Could stimulate, rather than relieve, fragmentation in international chemicals management;
- Could meet strong resistance from key donor parties concerned about the proliferation of uncoordinated financing institutions and strategies;
- Governments have previously indicated a reluctance to establish additional stand-alone, MEA-specific funds;
- By failing to take advantage of complementarity and overlap with other chemicals agreements, could result in higher overall incremental costs of implementation.

Option 8: Establish a financial mechanism for chemicals agreements

199. Rotterdam parties could join with the parties of other agreements to establish a new, multipurpose mechanism for a thematic cluster of chemicals agreements that reflects the facts that chemicals issues tend to be inter-related and cannot be dealt with in isolation.

Advantages:

- Could be a significant step towards achieving integration of international chemicals management efforts;
- Could provide a sustained, dependable funding source to assist developing countries and economies in transition in their chemicals management efforts, including implementing the Rotterdam Convention;
- Could optimize efficiency and economy of scale by facilitating the development of cross-cutting chemicals management projects.

Disadvantages:

- Would enhance efficiency and integration only if it included the Stockholm and Basel Conventions and the POPs focal area, but Stockholm parties may be disinclined to engage in the significant re-organizational efforts required;
- If the new mechanism did not include the POPs focal area, would enhance fragmentation rather than integration, resulting in duplication of mission and overlap of institutional capabilities with the GEF;
- Would require the creation of a sizeable institutional structure that could take many years to optimize;
- Would require support from key stakeholders who have previously demonstrated their preference for the GEF.

Option 9: Impose a levy on importers/exporters

200. Parties could explore the plausibility of imposing a levy on exporters and/or importers of Rotterdam-listed chemicals that would be used to fund capacity building activities. Alternatively, such a discussion could take place at a broader level, including all institutions involved in international chemicals management, and considering larger segments of the chemicals industry.

Advantages:

- Could substantially supplement existing overseas development assistance (ODA) by generating new and additional financial resources to assist developing and economies in transition countries in their implementation of international chemicals management agreements;
- Would provide a way to incorporate market-based mechanisms into multilateral chemicals regulatory instruments;
- Would produce global environmental and health benefits by requiring industry to internalize costs and create pricing signals that could lead to phase-outs of dangerous chemicals and greater use of safer alternatives.

Disadvantages:

- Negotiation and implementation of legal instruments needed to establish a levy could be complex;
- Political resistance to an international "tax" could be high.

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