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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FINANCING TREATY OPERATIONS AND IMPLEMENTATION: A SURVEY OF MECHANISMS

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I. INTRODUCTION

Whether the subject matter primarily concerns trade, environment or development, issues surrounding financial resources, technology transfer and benefit-sharing play a central role in multilateral negotiations today. Focusing on international environmental treaties and treaties on the law of sustainable development, this paper will examine different means of financing treaty administration and implementation. More than most, these multilateral treaties have had to grapple with global inequities in order to attract the wide participation required to address global environmental problems. Hence, it is in this field that we see the evolution of concepts like "common but differentiated responsibility" or that the obligations arising from a treaty's operational provisions are conditioned upon the fulfilment of financial obligations of developed country parties. It is also in this context that a body of institutional and substantive law has arisen out of the establishment and development of international mechanisms to provide financial assistance to developing countries to finance their treaty obligations.

International lawyers are increasingly faced with complex institutional and legal issues posed by the creation of new mechanisms to provide financial resources dedicated to financing treaty obligations and operations. Legal issues are posed, for example, by undefined terms (e.g., "agreed full incremental costs"). Institutional issues can arise in determining how a financial mechanism and its implementing agencies are to relate legally to a Conference of the Parties (COP). An analysis of the treaty mechanisms outlined below requires an examination of how effectively these issues have been addressed in actual practice.

Examination of past experience can also raise awareness of the possible repercussions of compromise text and consequent need to be aware of the distinction between financial incentives and issues in the negotiating process and in the process of operational decision-making under the treaty. Whatever is agreed upon has to be able to be translated from a general commitment to specific obligations. In analyzing provisions as possible prototypes for the International Undertaking (IU), negotiators need to be cognizant of the fact that adopting an approach from one context without regard for the differences in the new context can lead to unanticipated problems. A good example of this is illustrated by the evolution of the use of the term "incremental costs." It was a fairly straight-forward concept in the context of the Montreal Protocol (MP) but it does not translate as easily in the context of the United Nations Framework Convention on Climate Change (FCCC) and it is even more problematic in the context of the Convention on Biological Diversity (CBD).

The 1990 Amendments to the MP established a financial mechanism to assist developing countries in implementing their obligations under the treaty. These amendments marked a turning point in international law because it was the establishment of this separate mechanism that led to the further development and expansion on rules on finance and technology transfer in the CBD, the Climate Change Convention and most recently with the Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD). Nevertheless, treaty funds do pre-date the MP financial mechanism and this paper will therefore look at MP precedents.

Financing is needed for two broad categories of activity. One is treaty administration and includes, for example, the costs of running a Secretariat and meetings of the Parties, (sometimes including developing country participation.) The other is treaty implementation and includes funding to enable developing country parties to fulfil their substantive obligations under the treaty regime. Accordingly, Section II will examine the means by which treaties provide for their administration. Financing mechanisms within the context of the Food and Agriculture Organization are of particular relevance to the International Undertaking because it was concluded and is being revised under the auspices of the FAO Commission on Genetic Resources. Accordingly, Section III will examine FAO financing mechanisms. Section IV will turn to the financing of treaty implementation looking in particular at the World Heritage Convention (WHC); the Convention on the Protection of Wetlands of International Importance, Especially as Waterfowl Habitat (the Ramsar Convention), the MP, the CBD, the FCCC and the CCD. Section V will explore alternative funding mechanisms including trust funds (which, while relatively new to this arena are based on an old and well-established domestic legal mechanism, the common law trust), collaboration with the private sector ; and micro-credit. Section VI makes some brief preliminary conclusions.

The paper is not an exhaustive analysis of treaty financing. Nevertheless, it is hoped that it will provide useful information for those considering the subject in the context of the revision of the IU.

II. FINANCING TREATY ADMINISTRATION

The United Nations Environment Programme (UNEP) provides the Secretariats for several multilateral and regional treaties including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), the MP, the treaties of the Regional Seas programme, the Convention on Trade in Endangered Species (CITES) and the CBD. Until the CBD, trusts funds covered both the administration and implementation of UNEP-administered treaties. UNEP itself derives the substantial majority of its financial support from the special Environment Fund established by UN General Assembly after the Stockholm Conference on Environment in 1972. The UNEP Fund covers both project activities and part of its administrative costs on the basis of voluntary contributions by participating governments.

Special procedures were adopted in 1973 which allowed for the establishment of trust funds “for specified purposes” under the framework of the Environment Fund and in accordance with the Financial Rules of the United Nations (UNEP Governing Council Decision 2(1), 22 June 1973). The first of these trust funds established for extra-budgetary purposes was established in 1978 to finance the administration and operation of the Kuwait Regional Convention for the Cooperation on the Protection of the Marine Environment from Pollution (UNEP Governing Council Decision 6/13/D, 24 May 1978). The fund was established with an initial US $5.8 million. Trust funds to implement the Convention for the Protection of the Mediterranean Sea Against Pollution and CITES followed in 1979.

Between 1979 and 1993, eight more trust funds were established for other UNEP-sponsored global or regional conventions or protocols including the MP, the Basel Convention and the CBD. The early trust funds were based on fund grants but later provided for “sunset periods” during which parties to the treaties were to take over as trust fund contributors. While the contributions are sometimes called “voluntary”, they are in fact based on an agreed percentage shared usually following the United Nations Scale of Assessments. The moneys are not included in a country’s overall UN contribution but are contributed to special sub-accounts earmarked for the particular convention.

The separation from dependence on UNEP fund grants resulted in a greater sense of autonomy and ownership of the treaty regime amongst the parties. Another effect of this separation from UNEP fund grants was a greater recognition of the need to provide special funding to developing countries to enable them to more effectively take part in treaty negotiations and governance. Throughout the CBD negotiations, for example, UNEP solicited contributions to the trust fund specifically to ensure the participation of at least two representatives of all developing countries wishing to participate.

Foreshadowing the future separation between funding for treaty administration and for developing country implementation, under the CBD, the Basel Convention also established a separate technical assistance trust fund. Financing for the operations of the CBD including the Secretariat, is provided through a trust fund administered by UNEP in accordance with rules adopted at the first meeting of the COP. Contributions by parties are based on the United Nations scale of assessments for the apportionment of the expenses of the United Nations adjusted to provide that no one contribution shall exceed 25% of the total and that no contribution from a least developed country Party shall exceed 0.01% of the total.

The 1971 Ramsar Convention did not initially provide for a permanent Secretariat to service the treaty. In 1987 the COP recommended that a budget and a permanent Secretariat be established. Prior to amending the Convention in accordance with this recommendation, funding for secretariat services for the Convention was largely provided by IUCN. This situation placed undue burden on IUCN and its members and it became clear that it was necessary to endow the Convention with its own means for the implementation of Conference decisions, subject to the control of the Parties.

The so-called Regina amendments, which entered into force in May 1994, empower the Conference of the Contracting Parties to establish the financial regulations of the Convention. At each of its ordinary meetings, the Conference adopts the budget for the next financial period by a two-thirds majority of parties present and voting. Thus far, the budget has always been adopted by consensus with no need to resort to voting. With the Regina amendments, contributions became mandatory. It was decided in Regina that the annual contribution would be calculated in accordance with international practice based on the United Nations scale of contributions. Subject to the approval of the Standing Committee, contributions may include contributions from States that are not Party to the Convention, from governmental, intergovernmental and non-governmental organizations, and from other institutions. The Secretariat distinguishes between contributions to the core budget which are considered obligatory and voluntary contributions to projects which may come from any source.

III. FINANCING MECHANISMS UNDER THE FOOD AND AGRICULTURE ORGANIZATION

FAO is the largest autonomous agency within the United Nations system with 181 members. FAO's 2000-2001 biennial budget is set at $650 million, and FAO-assisted projects include more than $300 million per year from donor agencies and governments for investment in agricultural and rural development projects.

Financially, FAO is divided into the Regular Programme and the Field Programme. The Regular Programme covers internal FAO operations, including staff. FAO Member Nations finance the Regular Programme, each contributing according to levels set by the Conference.

The Field Programme implements FAO's development strategies and provides assistance to governments and rural communities. Projects are usually undertaken in cooperation with national governments and other agencies. Over 60% of the Field Programme is financed by national trust funds; 22% is provided by the United Nations Development Programme (UNDP); and 16% comes from FAO's Regular Programme Budget.

Dozens of international agreements among FAO Member Nations operate within FAO or under its auspices. Such agreements may come into force in one of two ways – under the FAO Constitution's Article XIV or outside the strict framework of the FAO Constitution. Article XIV agreements are adopted by the FAO Conference (made up of all FAO Members), or, in the case of regional Agreements, the FAO Council (made up of 49 Members, elected by the Conference to govern between meetings of the FAO Conference). Agreements outside the strict framework of the FAO Constitution are concluded under the auspices of FAO, but exist and operate outside FAO's constitutional framework. In fact, FAO may convene diplomatic conferences for the adoption of such international agreements outside the framework of FAO.

Article XIV bodies are financed one of three ways. They may be financed entirely by FAO; they may be financed by FAO, and also undertake cooperative projects funded by members of the body; or, they may get some funding from FAO and also operate autonomous budgets.

The Convention Placing the International Poplar Commission within the framework of FAO is an example of an Article XIV body funded entirely by FAO. FAO funds the operation of the Secretariat. Members and observers must pay their own expenses to attend meetings. When a Commission or Executive Committee meeting takes place away from the seat of the Commission, the host country must pay "all additional expenses related to such sessions." Host countries must also pay for any publications relating to Commission meetings, except for the session report. (Article X.)

An example of a body financed by FAO which also undertakes cooperative projects with its members is the Agreement for the Establishment of the Asia-Pacific Fishery Commission, created in 1948. Under this agreement, parties pay their own expenses for participating in meetings, committees, and working groups (Art. VIII, para. 1), but FAO pays the expenses of invited experts. (Art. VIII, para. 5). Any research or development projects undertaken by individual members, whether undertaken independently or upon recommendation of the Commission, are paid for by those individual members. (Art VIII, para. 3).The members pay, collectively, in a mutually agreed form and proportion, for research and development activities contemplated by the agreement, including fishery research, development, training and extension activities (Art. IV(e) and (f), Art VIII, para 4.) The agreement required FAO to create a trust fund for such activities, to be administered by FAO in accordance with its own Financial Regulations.

The European Commission for the Control of Foot-and-Mouth Disease, established in 1953, is a typical agreement of the third Article XIV type, which has an autonomous budget, as well as FAO funding. Under the Commission's Constitution, members contribute dues on a scale agreed by two-thirds of the Commission. The Commission also accepts contributions from other organizations. All contributions, both member dues and voluntary contributions, go into a Trust Fund administered by FAO, according to FAO regulations.

The main characteristics of bodies established under Article XIV of the FAO Constitution are laid out in the following table.[2]

Article VI Bodies	**Article XIV Bodies**
Authority for Establishment The Conference, the Council or the Director-General on the authority of the Conference or Council.	**Authority for Establishment** 1. Established through International Agreement by the Contracting Parties under Article XIV of FAO Constitution.
Membership All Member Nations and Associate Members.	**Membership** Non-members of the Organization can be members but must contribute towards the expenses incurred by the Organization with respect to the activities of the body.
Source of Financing 1. Entirely financed by FAO except the participation of members to Sessions. 2. Possibility for extra-budgetary support. 3. Cannot have their own autonomous budget from mandatory contributions.	**Source of Financing** Bodies established under Article XIV of the Constitution fall into one of the three following categories: - bodies entirely financed by the Organization; - bodies that, in addition to being financed by the Organization may undertake cooperative projects financed by the members of the body; - bodies that in addition to being financed by the Organization, have autonomous budgets.
Secretariat Secretary appointed by the Director-General.	
Powers 1. Have an advisory role. Can adopt recommendations on management issues, which are not binding.	

[2] (Information taken from *Material of relevance for the legal and institutional status of the revised International Undertaking on Plant Genetic Resources, which was requested by the Fifth Meeting of the Contact Group,*" CGRFA/CG-6/01/3, April 2001.)

2. Can create subsidiary bodies, subject to the availability of funds in the relevant approved budget. 3. Can establish rules of procedure for subsidiary bodies, but the latter must be in conformity with the Rules of Procedure of the parent body and the General Rules of the Organization. 4. Bodies may recommend amendments to Statutes which must be transmitted to the Director-General and be included in the agenda of the Council or Conference.	**Secretariat** Secretary appointed by Director-General but the Agreement may provide for the consultation with or with the approval or concurrence of Members of the body concerned. **Powers** 1. May have regulatory powers to adopt management measures of a potentially binding nature. 2. Can create subsidiary bodies, subject to the availability of funds in the relevant approved budget. 3. Bodies may adopt amendments to Conventions and Agreements which shall be reported to the Council which shall have the power to disallow them. 4. The rules of procedure shall not be inconsistent with the Convention or Agreement establishing the body or with the Constitution.

IV. <u>FINANCING TREATY IMPLEMENTATION</u>

A. The World Heritage Convention

The WHC establishes a Fund for the Protection of the World Cultural and Natural Heritage (Article 15). It is a trust fund that grants financial assistance to protect cultural and natural heritage of outstanding universal value. The Fund is administered by the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage (the World Heritage Committee) established by the Convention (Article 8). Its Secretariat is located at UNESCO headquarters, Paris. The Committee "receives and studies requests for international assistance from the States Parties" and decides on "action to be taken with regard to these requests, the nature and extent of its assistance" and is authorized to conclude "on its behalf, … the necessary arrangements with the government concerned" (Article 13).

The Committee is composed of 21 States Parties constituting an "equitable representation of different regions and cultures of the world" (Article 8.1).

The trust fund is managed in conformity with the financial regulations of UNESCO. It is made up on compulsory and voluntary contributions as well as extra-budgetary contributions. Extra-budgetary contributions can be substantial. For example, at the 23rd session of the World Heritage Committee in 1999, the United Nations Foundation (UNF) announced it would contribute $2.9 million to World Heritage sites in the Democratic Republic of the Congo. The Committee can accept ear-marked funds provided it has decided on the implementation of the program or project for which the funds are ear-marked. The Convention explicitly states that "No political conditions may be attached to contributions to the Fund."

Article 16 provides that the States Parties are requested to pay regularly their contributions in the form of a uniform percentage applicable to all parties as determined by the General Assembly of State Parties to the

Convention (the equivalent of a COP). During its annual sessions the World Heritage Committee establishes the budget for the following calendar year. This depends on the income received and the balance available in the Fund's account. For 1997, the Committee has established a budget of 3.5 million dollars for a great number of activities. US$ 1,945,000 was allocated for International Assistance in 1997, with an additional $500,000 reserved for emergency assistance to States Parties.

The mandatory contribution to the World Heritage Fund is calculated at one percent of the country's contribution to UNESCO. The Convention provides an incentive for payment by making it a requirement for the States Parties to be able to present themselves for election in the World Heritage Committee and for receiving technical cooperation and preparatory assistance (Article 16.5).

Assistance to States Parties can take five different forms and can be provided upon the request of the States Parties themselves:

1) Preparatory assistance: With a budgetary ceiling fixed at US$ 15,000 per request this type of assistance can be provided for the preparation of tentative lists of properties suitable for inclusion on the World Heritage List as well as for the preparation of training courses or large-scale technical assistance projects.

2) Technical cooperation: This is assistance for the conservation and management of sites inscribed on the World Heritage List through studies, the provision on experts, the supply of equipment, the provision of low interest or interest-free loans, or the granting of non-repayable subsidies.

3) Training.

4) Emergency assistance.

5) Educational, information and promotional activities.

With respect to the procedure for requesting international assistance, the State Party must present a request in accordance with the forms established for each of the types of international assistance. The World Heritage Committee examines the request and transmits its recommendation to the Chairperson (requests for preparatory assistance; technical cooperation and training up to US$ 20,000; emergency assistance up to US$ 50,000; assistance for educational, information and promotional activities between US $5,000 – US$ 10,000) or the Bureau of the Committee (requests for technical cooperation and training up to US$ 30,000 and emergency assistance up to US$ 75,000). Requests for amounts that are above the amounts that can be approved by the Bureau are transmitted, with the Bureau's recommendation, to the Committee itself for approval.

To date, in most cases, the Chairperson, the Bureau and the Committee have examined and approved the international assistance requests on an ad hoc basis, i.e., following the order of presentation and the availability of funds. It is expected that this situation will change drastically due to the fact that requests now largely exceed the available funds. Faced with this situation the Committee has requested training strategies and is reconsidering priorities for technical cooperation.

B. The Ramsar Convention

The Ramsar Convention (1971), a contemporary of the WHC, had a much slower start because the treaty did not provide for financing and hence did not attract the participation of developing countries. In 1987, at the same time that it provided for a permanent Secretariat, the COP recommended the establishment of a fund to assist developing countries implement their obligations under the convention. In 1990, the Wetlands Conservation Fund was established. It was administered by the Bureau under the supervision of the Standing Committee, pursuant to the “Terms of Reference for the Financial Administration of the Convention”. It provided assistance to developing countries, upon their request, to support wetland conservation in one of four fields. 1) improving the management of site on the Ramsar List; 2) designating new sites; 3) promoting “wise use”; and 4) supporting regional and promotional activities.

Since 1996, the Wetlands Conservation Fund has been called the Ramsar Small Grants Fund for the Conservation and Wise Use of Wetlands (SGF). Grants are available to support any projects that advance the Strategic Plan 1997-2002 and in for the next year in particular, the Convention Action Plan 2000-2002 (see http://ramsar.org/key_sgf_index.htm). As its name indicates, the SGF is for small-scale projects and does not replace the need for most developing countries and countries in transition to have access to much more substantial levels of funding in order to ensure the conservation and sustainable use of their wetland resources. The SGF offers a maximum of 40,000 Swiss Francs per project and is intended to play a catalytic role. The SGF has an important niche as a funding programme that can allow countries to address relatively small-scale projects or use SGF funds to make the necessary preparations for seeking funding from other sources for larger scale activities.

The types of projects qualifying for assistance from the SGF, the application procedure for funding, the criteria for allocating funds and the rules of financial management to be followed by those administering the SGF are determined by the operational guidelines adopted by the Standing Committee. The operational guidelines lay down a number of rules relating to financial management. The SGF includes such revenues as may be allocated in the budget approved by the Contracting Parties, voluntary contributions and any additional revenues received, including bank interest. The Secretariat may consult with the Scientific and Technical Review Panel for advice on SGF proposals. 10% is added to each approved project to help with the Bureau's own expenses in administering the projects. There is no provision made for ensuring an adequate balance for the SGF, and in fact there never has been an adequate balance. Each year when the Standing Committee meets to approve projects they do so based on how much money has been contributed to the SGF. There is no budget line for the SGF in the Secretariat's core budget.

The Fourth COP decided that a budgetary allocation of 10,000 Swiss Francs should be made to the Fund from the Convention budget each year in the 1991-1993 triennium. It did urge that this amount be "augmented by substantial voluntary contributions" ("Resolution on Financial and Budgetary Matters", annex to DOC. C.4.13). These voluntary contributions amounted to 20,500 Swiss Francs in 1990, 251,000 Swiss Francs in 1991, 334,500 Swiss Francs in 1992, and 411,000 Swiss Francs in 1993. They enabled the Standing Committee to approve seven applications for funding in 1991, twelve in 1992, and thirteen in 1993.

The Fifth Meeting of the COP decided that a budgetary allocation of 100,000 Swiss Francs should be made to the Fund for each year in the 1994-1996 triennium (ten times the amount of the preceding triennium.) It also noted that voluntary contributions were inadequate and stressed the need to increase the amount of resources available to the Fund to at least US$ 1 million annually. At its present level, the Fund is able only to fund small projects normally up to about 40,000 Swiss Francs in value.

The Conference continues to urge parties to make or increase voluntary contributions to the Fund. Resolution RES. C.5.8 also reiterates the need for major contributions from other outside sources. The resolution also states that "developing countries continue to be the main focus of the Ramsar Wetland Conservation Fund . . . and that countries whose economy is in transition be assisted and supported through voluntary contributions by developed countries (through bilateral arrangements) or multilateral agencies, and that funds so donated may be channeled through the Ramsar Convention for administrative purposes where appropriate".

An interesting development concerning financial incentives was the offer by a non-governmental organization to provide funding for the operation of monitoring procedures, if the Contracting Parties matched the contribution. Nothing seems to have come of this offer. The Monitoring Procedure was renamed the Management Guidance Procedure in 1996 and in 1999 changed again to the Ramsar Advisory Mission (RAM). All the money in the RAM project comes from voluntary contributions, as there is nothing in the core budget for this purpose. There is currently a positive balance in the project, but in effect whenever a proposed RAM mission comes along, the Secretariat has to seek funding for it. At present only BirdLife International make a regular (albeit small) annual contribution for use of the RAM.

C. The Montreal Protocol

The 1990 Amendments to the MP established a mechanism, including a Multilateral Fund (MPMF), to provide financial and technical cooperation to developing-country parties to enable them to comply with the control measures required by the protocol. While the MPMF has links to the Global Environment Facility (GEF) it operates under the authority of the parties with its own administrative structure, terms of reference, work programs, guidelines and funding arrangements.

The MPMF meets on a grant or concessional basis the ‘agreed incremental costs’ of developing country Parties to enable their compliance with the control measures of the MP. It also finances clearing-house functions to identify cooperation needs, facilitates technical cooperation, distributes information and relevant materials, holds workshops and finances the Fund Secretariat.

The MPMF is administered by an Executive Committee made up of seven developed and seven developing country Parties. The chair rotates between developed and developing country Parties. The Committee, *inter alia*:

1) develops a three-year plan and budget and allocates resources among the implementing agencies;
2) supervises and guides the administration of the fund;
3) develops the criteria for project eligibility criteria and guidelines for the implementation of activities supported by the fund;
4) monitors and evaluates expenditures incurred under the fund;
5) develops and monitors implementation of specific operational policies guidelines and administrative arrangements, including disbursement of resources;
6) reports annually and makes recommendations to the parties;
7) nominates the chief officer of the fund Secretariat; and
8) performs all other functions assigned by the Parties.

The MPMF has its own Secretariat (as distinct from the Secretariat for the protocol itself). The Executive Committee reviews and approves all country programmes and requests for funding of the agreed incremental costs of projects and activities. The Secretariat reviews all projects and activities before submission to the Executive Committee. These reviews are based on the set of policies and criteria established by the Executive Committee. Consistent with activity 5 listed above, the Executive Committee approves funding for projects and activities, including bilateral co-operation.

The MPMF is also assisted in its work by UNEP, UNDP, UNIDO and the World Bank. These are the four agencies contracted to develop and implement the projects and activities supported by the MPMF.

Contributions to the MPMF are based on the UN scale of assessments but countries can be credited up to 20% of their assessment for bilateral assistance provided that such contribution, as a minimum, relates to compliance with the MP, provides additional resources and meets incremental costs.

Assistance is usually provided as a grant. Concessional loans are included in the mechanism but have rarely been used. All technical assistance and pre-investment activities must be provided in the form of grants. Countries are allowed to make their contribution in kind through provision of expert personnel, technology, technology documentation, and training. This mechanism, however, has also rarely been used.

Before they can get assistance from the MPMF, countries have to prepare a country study to determine their production and consumption of ozone-depleting substances and a country program describing how they will eliminate these substances including a timeline and budget. The Executive Committee reviews and approves all country programmes.

The MPMF broke with the traditional practice of assistance programs and institutions whereby donor states maintain control over the money they contribute so that collectively they have a proportionate control over disbursement decisions. The World Bank and the International Monetary Fund, for example, have proportionate voting. The U.S. first opposed this new structure stating that “as potentially the biggest donor to the Fund, it should have the biggest share of the votes on the executive council that will administer its money." The US eventually conceded this position but stated that "any financial mechanism set out here does not prejudice any future arrangements the Parties may develop with respect to other environmental issues."

This statement foreshadowed the controversy that would follow in the discussions concerning the financial mechanism under the CBD and the Climate Change Convention and later in the restructuring of the GEF.

D. The Convention on Biological Diversity

The discussions concerning the financial mechanisms were some of the most controversial in the negotiations for the CBD. Developing countries advocated for an independent mechanism modelled on the MPMF where developing and developed countries had equal representation and weight in voting. Most developed countries wanted the financial mechanism to be provided by the GEF where voting, at least at the time of the negotiations, would be proportional to financial contribution in line with World Bank procedures.

The treaty established but did not identify the institution to operate the financial mechanism. Article 21 of the Convention on Biological Diversity provides for a mechanism for the provision of financial resources to developing country Parties for purposes of this convention on a grant or concessional basis. The financial mechanism is to operate under the guidance and authority of the COP. By resolution, the negotiating parties agreed that the GEF would operate the financial mechanism until the first meeting of the COP which would take a decision on whether or not to continue with the GEF. The COP at its first meeting decided that the GEF would continue to serve as the institutional structure to operate the financial mechanism under the Convention on an interim basis, in accordance with Article 39 of the Convention which calls for its restructuring to be more democratic and transparent.

The GEF has three implementing agencies, the World Bank, UNDP and UNEP. The World Bank is the dominant influence on the culture of the GEF. The World Bank is the GEF administrator and is responsible for all investment projects. UNDP is responsible for all pre-investment studies, technical assistance projects, and a small grants program. UNEP provides environmental expertise and ensures project consistency with existing environmental treaties. The GEF chairman is from World Bank staff and is responsible for the operation of the facility. The chairman is assisted by the GEF administrator, also from the World Bank, who manages the day-to-day operations of the facility and coordinates the work programs.

There is an implementation committee composed of GEF operational and managerial staff from all three implementing agencies. The IC reviews policy, program and project issues. There is a Scientific and Technical Advisory Panel that advises the implementing agencies on technical issues including technical criteria for project approval. The Assembly, to which each participating country appoints a representative, meets every three years. Its functions include review of the general policies of the GEF and evaluation of the operation of the GEF on the basis of reports submitted by the Council. Each member of the Council may separately case the votes of each participant in the constituency represented. Voting is intended to be made by consensus. A formal vote is taken on any matter of substance only as a last resort. Decisions requiring a formal vote by the council are taken by a double weighted majority, an affirmative vote representing both a 60 % majority of the total number of participants and a 60% majority of the total contribution. Paragraph 6 of the Instrument for Establishment of the Restructured GEF states that the use of the GEF resources for the purposes of the CBD and the FCCC "shall be in conformity with the policies, program priorities and eligibility criteria decided by the Conference of the Parties of each of those Conventions."

Projects may be proposed by governments, the implementing agencies, non-governmental organizations, the private sector and others. Project proposals must be endorsed by the recipient government. Projects can be free-standing or linked to regular World Bank loans. Approximately 80% of the projects administered by the World Bank are linked to their loans. There is also a mechanism now to finance small and medium-sized enterprises.

E. The Climate Change Convention

The FCCC, like the CBD, established a financial mechanism and thus far this mechanism has been operated by the GEF. The Parties to the FCCC have continued to explore other mechanisms for financing and technology transfer. Article 10(c) of the Kyoto Protocol adopted in December 1997 states that "all Parties [shall] cooperate in the creation of an enabling environment for the private sector." The Protocol is innovative because it formally allocates a role to foreign private investment in the technology transfer process. Article 12 establishes a "Clean Development Mechanism" (CDM) by which developed countries can invest in projects in developing countries which achieve sustainable development and contribute to the ultimate objectives of the treaty. These Parties can use the certified emissions reductions accruing from such investment projects to contribute to compliance with part of their emission limitation and reduction limitations. What is interesting about the CDM is it is a mechanism established by an instrument – the COP -- to which only States can be Parties but itself allows for participation by both public and private entities. One would therefore expect Parties -- pursuant to Article 10 (c) and through their use of the CDM -- to develop policies supportive of private investment in climate-sensitive infrastructure in developing country Parties. The modalities, rules and guidelines for the implementation of the CDM and also for Emissions Trading (Article 17) are still being developed by the Parties.

Article 6 of the Protocol authorizes the trading of emission reduction units between nations with reduction targets. Paragraph 3 recognizes the potential for private sector projects by authorizing Parties with reduction targets to authorize "legal entities" to participate in the generation, transfer or acquisition of emission reduction units.

The technicalities of carbon trading or the operation of the CDM may not have relevance in all contexts. Nevertheless, the means of private sector involvement in achieving treaty objectives should be of interest in any regime where there is private sector interest in the subject matter covered by the treaty.

F. The Convention to Combat Desertification

The CCD entered into force on December 26, 1996. Unlike the CBD and the FCCC, the CCD does not establish any particular fund for financing programs aimed at halting desertification nor does it include any new binding financial obligations The Convention states "[i]n order to increase the effectiveness and efficiency of existing financial mechanisms, a Global Mechanism to promote actions leading to the mobilization and channeling of substantial financial resources, including for the transfer of technology, on a grant basis, and/or on concessional or other terms, to affected developing country Parties, is hereby established". Furthermore, Article 20 calls for existing resources to be used more efficiently and effectively. The relationship between the treaty's lack of its own resources and its effectiveness will need to be monitored.

The International Fund for Agricultural Development (IFAD), a strong advocate for the treaty, was selected by the COP to operate the Global Mechanism (GM). The CCD is oriented towards community-based projects tailored to local input at the local level and recognizes the importance of non-governmental involvement (see, Preamble). One of the most significant innovations of the CCD is the establishment of internationally- funded national action programmes (Articles 10 and 31(I)(d)). Article 19 accords priority to capacity building and legal frameworks. Separate from the issue of funding sources, the CCD offers a new model based on local control that may provide valuable lessons for a financial mechanism that among other things will need to address issues such as the in situ conservation of plant genetic resources for food and agriculture.

Article 21 lists 14 points and subpoints relating to the functions of the GM. Furthermore, Decision 24/COP.1 contains 35 points in its Annex entitled "Functions of the Global Mechanism." From these the GM's Operational Strategy derived four broad functions, each describing specific functions that fit under those headings. These include:

- Functional Heading 1: Promoting actions leading to co-operation and coordination

- Partnership building whereby the GM establishes contacts with the CCD consultative processes and other organizations such as the UNDP, the CGIAR, NARS, GEF, private foundations, Regional Development Banks and NGOs;
- Marketing and awareness-raising to enable the GM to enjoy broad support.

• Functional Heading 2: Mobilizing and channeling financial resources

  - Mobilizing: the GM is to play a catalytic role, using its own resources, made available through voluntary contributions, to mobilize efficient preparation of national, sub-regional and regional action programs, and projects and programs stemming from them (with these serving as the basis for mobilizing and channeling financial resources for their implementation);
  - Channeling to build a bridge between resource needs and resource availability in line with "the basic and fundamental brokering role of the GM."

• Functional Heading 3: Analyzing and Advising on Request

  - An important role for the GM noted in the Operational Strategy is exploring how to access new and innovative sources of funds and make them available to Convention implementation.

• Functional Heading 4: Collecting and Disseminating Information

  - The GM is developing a database to provide a baseline against which future effectiveness of the GM will be measured, to collect and supply information on development assistance flows and needs, and identify criteria for allocating available resources;
  - Giving priority to "the transfer of indigenous and traditional knowledge, techniques and practices, to ease the burden of female labor" the GM will facilitate and promote "financing of acquisition, adaptation, development and transfer of appropriate technologies, know-how and practices which are relevant to combating desertification.

Interestingly, the Operational Strategy spells out reciprocal obligations for donor and recipient Parties. It states that provided that action programs based on a bottom-up approach including civil society and central and local government are produced by recipient country Parties, then "the Convention's Donor Community should honour its obligations under the Convention, i.e., provide the financial resources required for proper and timely implementation of the Action Program[mes]."

A Facilitation Committee (FC) was established to provide support and advice to the GM. It membership consists of IFAD, UNDP, the World Bank, GEF, CCD Secretariat, FAO, UNEP and the Inter-American, African and Asian Development Banks and in an ex-officio capacity, the Managing Director of the GM. By membership in the FC, the institutions undertake to support implementation of the CCD through their own regular programs. The Operational Strategy also states the GM's intention to create *ad hoc* tasks forces with member institutions on specific issues.

The GM operates three accounts. The first account is the Core Budget Administrative Account in which contributions from the Parties are deposited. The second account is the Voluntary Contributions Administrative Expenses Account which is capitalized with voluntary contributions and intended for the operations of the Office of the GM. The third account is the Basic Resources for the CCD Finance Account which is used to support Parties in developing National Action Plans and Sub-regional Action Plans and related initiatives.

IFAD has contributed US $ 2.5 million to the Basic Resources for the CCD Finance Account. A technical advisory group advises on the use of those funds. The GM is also exploring the prospects and ways of establishing an interface between the G-8 Debt Relief Initiative and the implementation of the CCD. The operations of the GM for 1998 and 1999 were financed through voluntary contributions from three developed country Parties.

V. ALTERNATIVE FUNDING MECHANISMS

A. International trust funds for national resources

As noted in Section II. above, there is now what can be described as a standard type of trust fund for earmarked contributions to support the international administration of different treaties. Increasingly, however, international trust funds are being established that deal with resources that remain under the national sovereignty of the country concerned. For example, with the involvement of seven donor countries and Brazil, the World Bank made arrangements for a Rain Forest Trust Fund for the Brazilian Amazon. Similarly, National Environment Funds have been established with the help of international organizations. The idea is to provide a dedicated source of public financing that is not subject to the political control of the country's regular budget and that also provides for local participation in addressing environmental concerns.

The trust funds can receive money both from traditional donors and from private institutions. This approach promotes coordination and cooperation between government, NGOs and the private sector and provides for more flexibility and transparency that is often possible with conventional funding mechanisms. Normally, a significant amount of money is put in an endowment with the agreement among the Parties (usually the government, one or more NGOs and the donors) that income from the money will only be used for specified purposes. The trust funds are usually administered by an independent Board of Trustees composed of representatives of the recipient nation's government, representatives of the donor community, representatives of civil society, such as local community groups and national non-governmental organizations, and research institutions. This approach can provide sustained financing and thus allows for long-term planning. The GM is currently considering the establishment of National Desertification (Trust) Funds for several African countries.

B. Private sector collaboration

Private sector financing is now at least five times greater than public sector financing from overseas development assistance (see, The World Bank, World Bank Debt Tables, 1996). At minimum, when there is a coincidence of interests or at least not a conflict of interest the possible mechanisms to encourage private sector collaboration within a treaty regime should be explored (this is separate from the issue of possible taxes on the private sector such as the "carbon tax" discussed in the context of Climate Change or the tax on seed sales in the context of the IU).

As noted in Section IV. D above, the Kyoto Protocol specifically calls upon its Parties to establish an enabling environment for private sector involvement. While the Protocol's focus is narrow and the economic dynamics favorable, it is clear that private sector collaboration was critical in implementing and even surpassing the requirements of the MP. Much of the technology of interest in the MP is in the hands of the private sector and may be proprietary technology. A consortium of US electronics firms formed a non-profit Industry Cooperative for Ozone Layer Protection (ICOLP). ICOLP has disseminated non-proprietary information by means of workshops and on-line systems that access data concerning ozone-safe technology. It has also disseminated an electronics-cleaning technology developed by Digital Equipment Corporation.

In response to the MP, in 1989 UNEP formed a Solvents Technical Options Committee that included experts from multinational corporations and governments. Many of these same organizations went on to become charter members of ICOLP. According to a five year review of ICOLP by the International Cooperative for Environmental Leadership (an association made up of Ford Motor Company, General Electric Company, Lockheed Martin Corporation, Mitsubishi Electric Corporation and Raytheon) it was trust built through continued personal contacts between the public and private entities that was critical to the success of the collaboration in support of the MP.

C. *Micro-credit*

As noted in Section IV. E above, the CCD stresses community-based projects and local control in its approach to combat desertification. Similarly, the concept behind micro-credit is to provide smaller loans directly to poorer people. Micro-credit programs provide money directly where it is needed and because smaller sums are involved with local projects designed by the people involved the projects tend to be more sustainable and less disruptive of the natural environment. Micro-credit programs are now active in many countries throughout the world. A financial mechanism for a treaty concerned with the conservation of plant genetic resources for food and agriculture would benefit from exploring the potential of building on existing micro-credit programs and the value of creating new ones where there are none in place.

VI. PRELIMINARY CONCLUSIONS

The issue of financial resources and financial mechanisms will be important in the revision of the IU as it is in all multilateral negotiations today. Negotiators must find a balance between achieving consensus at the expense of the ability to implement the agreed language and an inability to reach agreement based on unrealistic demands for precision. On the one hand, compliance cannot be achieved with overly vague language. On the other hand, continued discourse is part of the process of interpreting and implementing multilateral treaties concerned with a complex and diffuse subject area.

Lessons can be learned from experience. For example, in order to ensure some continuity and predictability in the flow of financial resources to the World Heritage Fund, contributions were tied to Parties contributions to UNESCO. It might be worth considering the possibility of tying contributions to a revised IU to percentage of the combined contribution to several international organizations. Taking a percentage of a figure derived from combined contributions might help mitigate from any vagaries in contributions to a given institution in any given year. Nevertheless, it is important to remember that while it may be easiest to rely on language approved in other treaties, a quick consensus may cause significant problems when it comes time to implement if proper analysis has not been made of the language’s applicability to the new situation.

In addition, as noted in the introduction, this paper represents a survey of financial mechanisms and is far from an exhaustive analysis. For example, UNDP and the World Bank have been involved in some innovative means of public-private sector partnerships for technology transfer that would be worth exploring for possible relevance.

ACRONYMS

COP	Conference of the Parties
CBD	Convention on Biological Diversity
CCD	Convention to Combat Desertification
CDM	Clean Development Mechanism
FAO	Food and Agriculture Organization
FCCC	Climate Change Convention
FC	Facilitation Committee (of the CCD)
IU	International Undertaking
MP	Montreal Protocol
MPMF	Montreal Protocol Multilateral Fund
UNEP	United Nations Environment Programme
WHC	World Heritage Convention