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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR
THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE

Second session

Nairobi, 16-20 September 1996

FINANCIAL RESOURCES AND MECHANISMS

Note by the secretariat

1. In accordance with the request of the Committee at its first session (UNEP/FAO/PIC/INC.1/10, para. 61), this note presents to the Committee a summary of the mechanisms for providing financial resources for the activities envisaged under the existing environmental and other conventions and protocols, in particular those of the following instruments:

- (a) Vienna Convention for the Protection of the Ozone Layer;
- (b) Montreal Protocol on Substances that Deplete the Ozone Layer;
- (c) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;
- (d) Convention on Biological Diversity;
- (e) United Nations Framework Convention on Climate Change;
- (f) United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;
- (g) Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific (Animal Health Commission Agreement);

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(h) Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC Agreement).

2. It also presents possible options of modalities for providing financial resources to such activities as may be undertaken under an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals including pesticides in international trade. In considering these issues, it should be taken into account that both the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO) are making contributions from their regular budgets to the execution of the voluntary PIC procedure.

I. MODALITIES FOR PROVIDING AND MANAGING ADMINISTRATIVE COSTS

3. Financial resources are needed for the administration of a convention, such as for maintaining necessary institutional arrangements and for undertaking such international activities as may be identified in the convention prior to its entry into force or subsequently decided by a Conference of the Parties. Details of necessary financial resources are set out in the budget for the administration of the convention which normally covers salaries, personnel travel, accommodation and other operating costs. Depending on the costs incurred on those components in the case of environmental conventions and protocols, the amount of overall financial resources necessary for the administration of the convention would vary.

4. Normally, the financial resources required for such administrative costs are provided as contributions from the Parties. In case of the Montreal Protocol, it is stated in its Article 13, paragraph 1, that "the funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties".

5. Contributions from the Parties may be based on the United Nations or FAO scale of assessments or other indicative scales, on special scales of contributions adopted by the governing body on the basis of series of factors, or on voluntary basis, or on a combination of both. In the case of the Vienna Convention and the Montreal Protocol, the Basel Convention, the Convention on Biological Diversity and the Climate Change Convention, the Parties to the instrument provide such contributions both on the basis of the United Nations scale of assessments (an indicative scale in case of the Climate Change Convention) and voluntary contributions. The rules of procedure of the Animal Health Commission Agreement provide for a scale of contributions to be adopted by the commission on the basis of the classification of States Parties into three groups based on such factors as number, productivity and economic value of their livestock. The IOTC Agreement provides for the scale of contributions to be based on a scheme under which due consideration is given to each Member being assessed on equal basic fee and a variable fee based, inter alia, on the total catch and landings of species covered by the Agreement and per capita income.

6. Such financial contributions are normally governed by the financial rules or regulations adopted by the Conference of the Parties, normally at

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its first meeting. Normally, a provision to this effect is included in the convention's provisions dealing with the functions of the Conference of Parties as the governing body of the convention. In accordance with such rules, the proposed budget for administrative costs, including costs for secretariat's personnel, meetings and necessary activities, is presented by the secretariat to a meeting of the Conference of the Parties for its consideration and adoption. For the first meeting of the Conference of the Parties, the proposed budget may be presented to the Conference by an interim secretariat of the convention or an organization designated to undertake functions of the secretariat of the convention on an interim basis.

7. In order to manage the contributions from the Parties to a convention, a trust fund may be established with an organization hosting the secretariat of the convention or with the organization(s) designated to undertake secretariat functions. This has been the case for the Vienna Convention, the Montreal Protocol, the Basel Convention, the Convention on Biological Diversity, and the Framework Convention on Climate Change. It is also the case for the Animal Health Commission Agreement and the IOTC Agreement. Establishment of such trust funds are subject to the approval by the Conference of the Parties which would review and authorize the utilization of such funds.

II. FINANCIAL RESOURCES AND MECHANISMS FOR TECHNICAL AND FINANCIAL COOPERATION

8. Adequate financial resources are necessary for each Party to carry out activities and measures for the implementation of the convention, and in this respect, each Party has the primary responsibility to provide financial support and incentives for such national activities which are intended to achieve objectives of the convention on the basis of its national plans and programmes.¹

9. However, many countries, in particular developing countries, do not have adequate technical and financial capabilities to carry out activities obligated under conventions.

10. Consistent with Agenda 21,² a number of recent environmental conventions set out provisions identifying the responsibility of developed country Parties in providing "new and additional financial resources" to meet the agreed full costs incurred by developing country Parties in complying with their obligations under the convention,³ or to mobilize substantial financial resources, including grants and concessional loans, in order to support the

¹ See: paragraph 1 of Article 20 of the Convention on Biological Diversity; paragraph 1 of Article 20 of the Convention to Combat Desertification.

² Paragraph 39.8.

³ Paragraph 3 of Article 4 of the Climate Change Convention; paragraph 2 of Article 20 of the Convention on Biological Diversity.

implementation of programmes under the convention.⁴ It has been pointed out in provisions of some of those instruments that the extent to which developing country Parties will effectively implement their commitments under the convention will depend on the effective implementation by developed country Parties of their commitments under the convention related to financial resources.⁵ On the other hand, the need for an effort by developing country Parties has been identified in mobilizing adequate financial resources for the implementation of their national action programmes, taking into account their capabilities.⁶

Types of financial mechanisms

11. Some existing environmental conventions and protocols have institutionalized the respective financial mechanisms for providing technical and financial assistance to the Parties that need such assistance in order to carry out the obligations set out in the convention. Types of such financial mechanisms under the existing conventions and protocols include:

(a) A trust fund for technical cooperation, established with and administered by an organization hosting the secretariat (for example, the Basel Convention);

(b) A multilateral trust fund established by the Parties, with its own management body representing the Parties and its own secretariat (for example, the Montreal Protocol);

(c) An international entity, with its own governing body and a secretariat for providing technical and financial assistance, which may be entrusted by a convention to undertake functions of the financial mechanism (for example, the Convention on Biological Diversity and the Framework Convention on Climate Change use the GEF);

(d) A mechanism for mobilizing financial resources through existing arrangements (for example, the Convention to Combat Desertification).

12. The activities contributing to the objectives of conventions and protocols may also be funded on a bilateral basis by donor Governments as well as through multilateral channels through intergovernmental or non-governmental organizations. The Convention to Combat Desertification and the Convention of Biological Diversity provide a framework for such activity.⁷

13. Rationalizing and strengthening the management of resources already allocated for the objectives of the convention is also an option.⁸

⁴ Paragraph 2 of Article 20 of the Convention to Combat Desertification.

⁵ Paragraph 7 of Article 4 of the Framework Convention on Climate Change; paragraph 4 of Article 20 of the Convention on Biological Diversity.

⁶ Paragraph 3 of Article 20 of the Convention to Combat Desertification.

⁷ Paragraph 4 of Article 20 of the Convention to Combat Desertification and paragraph 3 of Article 20 of the Convention of Biological Diversity.

⁸ See, for example, paragraph 5 of Article 20 of the Convention to Combat Desertification.

Technical cooperation trust fund

14. Under the Basel Convention, along with the establishment of a trust fund for its administration, the Conference of the Parties established a technical cooperation trust fund to support developing countries and other countries in need of technical assistance in the implementation of the Convention. The Technical Cooperation Trust Fund is financed from contributions made by the Parties and the non-Parties to the Convention as well as interested intergovernmental organizations. The Technical Cooperation Trust Fund is administered by UNEP, which hosts the secretariat of the Basel Convention, in accordance with the financial regulations and rules of the United Nations, the general procedures governing the operation of the Environment Fund and the terms of reference of the Trust Fund.

The Multilateral Fund for the Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer

15. Under the Montreal Protocol, a financial mechanism has been established to enable the compliance of developing countries operating under paragraph 1 of Article 5 of the Protocol with the control measures of the Protocol. This mechanism includes a Multilateral Fund, while at the same time providing for other means of multilateral, regional and bilateral cooperation.

16. The Multilateral Fund operates under the authority of the Parties, which decide on its overall policies. The functions of the Multilateral Fund are to:

- (a) Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs;
- (b) Finance clearing-house functions to:
 - (i) Assist developing countries Parties to identify their needs for cooperation;
 - (ii) Facilitate technical cooperation to meet these identified needs;
 - (iii) Distribute information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and
 - (iv) Facilitate and monitor other multilateral, regional and bilateral cooperation available to Parties that are developing countries;
- (c) To finance the secretarial services of the Multilateral Fund and related support costs.

17. The Multilateral Fund is managed by an Executive Committee, on which developed and developing country Parties are equally represented and which develops and monitors the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources. The Executive Committee carries out its tasks and responsibilities with the cooperation and assistance of the United Nations Development Programme (UNDP), UNEP, the United Nations Industrial Development Organization (UNIDO)

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and the World Bank or other appropriate agencies depending on their respective areas of expertise.

18. The Multilateral Fund is financed by contributions from developed country Parties on the basis of an adjusted United Nations scale of assessments. Contributions from other Parties are encouraged. There is also a provision for a Party's contribution, up to 20 percent, to be offset by bilateral cooperation consistent with the decision of the Parties. The Parties decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto. Resources under the Multilateral Fund are disbursed with the concurrence of the beneficiary Party.

Financial mechanisms operated by an international entity

19. The Framework Convention on Climate Change and the Convention on Biological Diversity set out similar provisions concerning the financial mechanism.⁹ Common elements of those provisions may generally be summarized as follows:

(a) There shall be a mechanism for the provision of financial resources on a grant or concessional basis for the implementation of the convention;

(b) The mechanism functions under the guidance of and is accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to the convention;

(c) Its operations are entrusted to one or more existing international entities (Climate Change) or by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting (Biological Diversity);

(d) The mechanism shall operate within a democratic and transparent system of governance;

(e) The contributions shall be such as to take into account the need for predictability by the Conference of the Parties.

20. In addition to the financial mechanism above, Parties are requested to strengthen existing financial institutions to provide financial resources (Biological Diversity) and provide financial resources through bilateral, regional and other multilateral channels (Climate Change).

21. Policy and programme priorities as well as criteria and guidelines for eligibility for access to and utilization of the financial resources have been adopted by the Parties.¹⁰ The respective policies and programme priorities

⁹ Framework Convention on Climate Change, Article 11 "Financial Mechanism"; Convention on Biological Diversity, Article 21 "Financial Mechanism".

¹⁰ Decision I/2 of the Conference of the Parties to the Convention on Biological Diversity (concerning the guidelines for monitoring and evaluation of utilization of financial resources by the restructured GEF, adopted as the interim guidelines); Decision 11/CP.1 of the Conference of the Parties to the

focus, among other things, on country-driven projects and programmes that have national priority of each country and that fulfil the obligations of the respective conventions. Only developing country Parties would be eligible to receive the funding. Regarding the eligibility of activities or projects, those that seek to meet the objectives of the convention (Biological Diversity) or those activities related to obligations concerning general commitments and communication of information related to implementation (Climate) would be eligible for funding.

The Global Environment Facility

22. The Global Environment Facility (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 in the following focal areas:

- (a) Climate change;
- (b) Biological diversity;
- (c) International waters; and
- (d) Ozone-layer depletion.

The agreed incremental costs of activities concerning land degradation, primarily desertification and deforestation, as they relate to the four focal areas are also eligible for funding.¹¹ The GEF's implementing agencies are the UNDP, UNEP and the World Bank. GEF is entrusted with the operation of the financial mechanism, on an interim basis, of the Convention on Biological Diversity and the Framework Convention on Climate Change. In both respects, the GEF functions under the guidance of, and is accountable to, the respective Conference of the Parties, which decides on policies, programme priorities and eligibility criteria for the purposes of the conventions. GEF is also available to meet the agreed full costs of activities concerning the communication of information on implementation under the Framework Convention on Climate Change.

23. GEF is intended to ensure the cost-effectiveness of its activities in addressing the targeted global environmental issues, funds programmes and projects which are country-driven and based on national priorities designed to support sustainable development and maintains sufficient flexibility to respond to changing circumstances in order to achieve its purposes. The GEF operational policies are determined by its Council. With respect to GEF-financed projects, its policy provides for full disclosure of all non-confidential information, and consultation with, and participation as

United Nations Framework Convention on Climate Change, by which it adopted the initial guidance on policies, programme priorities and eligibility criteria to operating entity or entities of the financial mechanism.

¹¹ The agreed incremental costs of other relevant activities under Agenda 21 that may be agreed by the GEF Council shall also be eligible for funding insofar as they achieve global environmental benefits by protecting the global environment in the four focal areas.

appropriate of, major groups and local communities throughout the project cycle.

24. Any State Member of the United Nations or member of a specialized agency may become a Participant in the GEF by depositing with the GEF Secretariat an instrument of participation.¹²

25. The new GEF Trust Fund has been established, and the World Bank serves as the Trustee of the Fund. The GEF Trust Fund consists of the contributions received in accordance with the present Instrument. In serving as the Trustee of the Fund, the World Bank serves in a fiduciary and administrative capacity, and is bound by its Articles of Agreement, by-laws, rules and decisions.

A mechanism for mobilizing financial resources through the existing arrangements

26. The Convention to Combat Desertification, in its Article 21, sets out the provisions concerning a mechanism for mobilizing financial resources through the existing arrangements.¹³ The Conference of the Parties and the organization it identifies to house the mechanism shall agree upon modalities to ensure, inter alia, that the mechanism:

- "(a) identifies and draws up an inventory of relevant bilateral and multilateral cooperation programmes that are available to implement the Convention;
- "(b) provides advice, on request, to Parties on innovative methods of financing and sources of financial assistance and on improving the coordination of cooperation activities at the national level;
- "(c) provides interested Parties and relevant intergovernmental and non-governmental organizations with information on available sources of funds and on funding patterns in order to facilitate coordination among them; and
- "(d) reports to the Conference of the Parties, beginning at its second ordinary session, on its activities."¹⁴

27. Also in general, "[t]he Conference of the Parties shall promote the availability of financial mechanisms and will encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention".¹⁵ Areas

¹² In the case of a State contributing to the GEF Trust Fund, an instrument of commitment is deemed to serve as an instrument of participation. Any Participant may withdraw from the GEF by depositing with the secretariat an instrument of termination of participation.

¹³ See paragraph 4 of Article 21.

¹⁴ Paragraph 5 of Article 21.

¹⁵ Paragraph 1 of Article 21.

for particular attention are elaborated in the Convention.¹⁶ In accordance with paragraph 2 of Article 21, "[t]he Conference of the Parties shall also encourage the provision, through various mechanisms within the United Nations system and through multilateral financial institutions, of support at the national, subregional and regional levels to activities that enable developing country Parties to meet their obligations under the Convention".

III. OPTIONS

28. Section A below presents options for providing and managing costs for the administration of the future legally binding instrument under consideration of the Committee. Section B presents options and points for consideration as they relate to financial resources and mechanisms for technical and financial cooperation. In the preparation of the options and points for consideration contained in both sections, the financial arrangements contained in the existing environmental conventions and protocols, in particular those instruments referred to in parts I and II above, are fully taken into account.

A. Administrative costs

29. Funds are needed to administer any instrument, for example, costs for personnel (Professional and higher categories of secretariat staff), consultants, administrative support costs (support staff), conference-servicing costs, costs for official travel, participation costs of developing countries in relevant meetings and general operating expenses, for example costs for equipment (expendable and non-expendable equipment), rental of office premises, other miscellaneous costs, including those for operation and maintenance of equipment, reporting, communications and freight charges (document shipment) and hospitality, and overheads.

30. Options for providing such financial resources might include:

(a) Option 1. Contributions from the Parties on the basis of the United Nations scale of assessments or other indicative scale of assessments;

(b) Option 2. Voluntary contributions from the Parties; or

(c) Option 3. A combination of the above options.¹⁷

31. Regardless of the options chosen for the management of financial contributions, consideration should be given to establishing a trust fund for the purpose of administering the instrument.¹⁸

32. Regarding a reference to financial arrangements for administrative costs in the future instrument, possible options might be:

(a) Option 1. Setting out provisions generally describing the envisaged modalities of financing the administration of the instrument; or

¹⁶ Ibid.

¹⁷ See paragraph 5 above.

¹⁸ See paragraph 7 above.

(b) Option 2. Indicating, in one of the provisions governing a Conference of the Parties, that financial rules and regulations would be adopted by the first meeting of the Conference of the Parties, without referring to specific arrangements.

B. Financial resources and mechanisms for technical and financial cooperation

33. At the first session of the Committee, the issue of the need to assist developing countries in building the capacities and capabilities necessary for implementing a legally binding instrument was raised, as was the link between financial mechanisms and technical assistance, and the scope for utilizing the existing bilateral and multilateral arrangements for technical and financial assistance.

34. Given the above, the Committee may wish to consider setting out, in a legally binding instrument, provisions governing a financial mechanism for providing assistance to Parties without adequate capacities and capabilities to implement the instrument. Options for such provisions might be either one of the following:

(a) Option 1. Setting out a general provision stating that the Conference of the Parties would consider the issue at one of its meetings; or

(b) Option 2. Setting out provisions which outline the envisaged financial mechanism.

35. When consideration is given to possible options for such a financial mechanism, the following points might be taken into account:

- (a) The purposes of the financial mechanism;
- (b) Institutional arrangements for the management of the financial mechanism;
- (c) The operational procedure for utilizing financial resources;
- (d) The eligibility for receiving assistance; and
- (e) Sources of financial resources.

The following are options and matters for consideration on those five points.

Purposes of the financial mechanism

36. The term "financial mechanism" does not presuppose the establishment of a specific fund - rather, it refers to the range of options for facilitating the assistance to enable countries to implement the instrument.

37. While the ultimate purpose of the financial mechanism would be the full and effective implementation of the instrument by all Parties, there might be different types of functions expected from the financial mechanism. Options might include:

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(a) Option 1. Facilitating the provision of technical and financial assistance by existing bilateral and multilateral aid/financial agencies, by providing the parties with the information on such available assistance;

(b) Option 2. In addition to the above, collecting and organizing requests of assistance from the Parties and transmitting such requests to bilateral and multilateral aid/financial agencies.

Institutional arrangements for the management of the financial mechanism

38. Regarding institutional arrangements for the management of the financial mechanism, possible options might include the following:

(a) Option 1. Utilizing the secretariat of the instrument, or the organization(s) designated to undertake functions of the secretariat, as the administrative body of the financial mechanism;

(b) Option 2. Establishment of an independent body to manage the financial mechanism, for example a standing committee of the Parties elected by the Conference of the Parties. For an interim period, the members of the body may be identified by a diplomatic conference which adopts the instrument. Such a management body might receive administrative support from a small secretariat established for that purpose, or from the secretariat of the instrument, or the organization(s) designated to undertake functions of the secretariat.

39. In order to manage financial resources, it might be appropriate to establish a trust fund with an organization that hosts the secretariat of the instrument, or with the organization(s) undertaking secretariat functions.

Operational procedure for utilizing financial resources

40. The operation of a financial mechanism, irrespective of its institutional arrangements, should be subject to the overall guidance of the Conference of the Parties, which would be responsible for establishing the priorities for meeting the objectives of the Convention. These priorities could be met by either actions applied globally, or actions at the national level, or a combination of both. Developing countries and countries with economies in transition seeking assistance to meet their obligations under the Convention, could identify their needs within the overall priorities identified by the Parties.

41. The operational procedures should include provision for monitoring and evaluation. The development of performance criteria should be an early priority for the Parties.

Eligibility for receiving assistance

42. The objectives of assistance should be to assist countries to meet their obligations under the Convention.

43. Recipients/beneficiaries of assistance may be specified in provisions of the instrument, identifying which categories of countries would be eligible to receive assistance under the financial mechanism of the instrument.

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44. Since any assistance is intended to achieve full implementation of the instrument, it might be important for a recipient Party to show its commitment to fully comply with the provisions of the instrument when it requests for assistance.

45. Consideration might be given to provide necessary assistance also to a non-Party that is voluntarily in compliance with the provision of the instrument, with a view to enable such non-Party to become a Party.

46. It will be necessary to identify categories of activities to be supported and the extent of the component eligible for support (for example, whether the concept of incremental costs would be appropriate.)

47. If consideration is given to identifying categories of activities eligible for funding, in addition to country-driven projects and programmes, due attention be given to activities supportive to capacity building that may be more effectively executed at a regional, inter-regional or global level.

Sources of financial resources

48. Possible sources of funds might include:

(a) New and additional funds in voluntary or assessed contributions from the Parties for providing assistance in the implementation of the instrument;

(b) Contributions from the Parties for providing targeted assistance for the implementation of the instrument through bilateral aid/financial agencies of the Parties; and

(c) Contributions from multilateral aid/financial agencies and entities (including the GEF if it opens a new window or extends one of the existing windows for financing) and regional development banks.

49. Attention should also be given to ensuring, as far as is practicable, predictability of funding and the need for coordination and cooperation between donors engaging in bilateral activity.

50. Possible sources of funds might be either specifically referred to in the instrument according to source categories, or referred to in general terms.
