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**Intergovernmental negotiating committee  
to prepare a global legally binding instrument  
on mercury**

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**Preparation of a global legally binding  
instrument on mercury**

**Options for predictable and efficient financial assistance  
arrangements**

**Note by the secretariat**

At its meeting held in Bangkok from 19 to 23 October 2009, the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee on mercury agreed on a list of information that the secretariat would provide to the committee at its first session to facilitate the committee's work. Among other things, the secretariat was requested to provide a note addressing options for predictable and efficient financial assistance arrangements based on examples from other multilateral environmental agreements, including options under the direct authority of the parties, based on previously prepared assessments and updated to take into account issues of particular relevance to mercury. The present note responds to that request.

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\* UNEP(DTIE)/Hg/INC.1/1.

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## Introduction

1. The present note is based largely upon two previous assessments, which are available to the intergovernmental negotiating committee in the following two documents:

(a) UNEP(DTIE)/Hg/OEWG.2/3: “Report on financial considerations and possible funding modalities for a legally binding instrument or voluntary arrangement on mercury”.<sup>1</sup> This report was prepared in 2008 for the second meeting of the ad hoc open-ended working group on mercury. At the request of the participants at the first meeting of the ad hoc open-ended working group on mercury, held in Bangkok from 12 to 16 November 2007, the scope of the report was limited to two areas: first, possible modalities that might allow the Global Environment Facility (GEF) to provide financial resources for a legally binding or voluntary arrangement on mercury; and, second, the structural elements of the Multilateral Fund for the Implementation of the Montreal Protocol that could serve as a model for the financial mechanism for such an arrangement. Other financial options, such as a stand-alone mechanism funded through voluntary contributions (as seen in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal) and the Quick Start Programme under the Strategic Approach to International Chemicals Management, were not included in the study following discussion of them during the meeting;

(b) UNEP/FAO/RC/COP.2/10: “Study of possible options for lasting and sustainable financial mechanisms”.<sup>2</sup> This study was prepared in 2005 for the second meeting of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Among other things it reviewed and evaluated existing financial mechanisms for other multilateral environmental agreements and analysed the advantages and disadvantages of various options for a financial mechanism that would enable the effective implementation of the Rotterdam Convention by developing countries.

2. The present note builds on document UNEP(DTIE)/Hg/OEWG.2/3 by providing additional information that has become available since that document was first prepared. The note thus provides an update on GEF activities that may be particularly relevant to mercury and additional information bearing on the extent to which the Multilateral Fund might serve as a model for a financial assistance option under the mercury instrument. The note concludes with a discussion of some of the respective comparative advantages of the GEF and the Multilateral Fund approaches. The note does not discuss other matters treated in document UNEP(DTIE)/Hg/OEWG.2/3 such as the Basel Convention Technical Cooperation Trust Fund.

3. Information on the progress of the consultative process on financing options for chemicals and wastes being led by the Executive Director of the United Nations Environment Programme (UNEP) is available to the committee as document UNEP(DTIE)/Hg/INC.1/INF/5.

## I. Update on the Global Environment Facility

### A. Background

4. GEF is an independent financial organization that helps developing countries fund projects and programmes to protect the global environment. Three implementing agencies – UNEP, the United Nations Development Programme (UNDP) and the World Bank – play key roles in identifying, developing and managing GEF projects on the ground.<sup>3</sup> In addition, seven regional development banks and intergovernmental organizations contribute to the implementation of GEF projects as what are termed “executing agencies with expanded opportunities”.<sup>4</sup>

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1 Available in all six official languages of the United Nations at <http://www.chem.unep.ch/mercury/OEWG2/Documents.htm>.

2 Available in all six official languages of the United Nations at <http://www.pic.int/home.php?type=b&id=9&sid=27&tid=41>.

3 Instrument for the Establishment of the Restructured Global Environment Facility (hereinafter GEF Instrument), article 22 (2008), [http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF\\_Instrument\\_March08.pdf](http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Instrument_March08.pdf).

4 The seven executing agencies are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the International Fund for Agricultural Development, the Food and Agriculture Organization of the United Nations and the United

5. Working with these agencies, GEF provides eligible countries with new and additional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits.<sup>5</sup> At present, GEF serves the financial mechanisms of the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. The Conference of the Parties to each of these conventions determines the eligibility criteria for activities that GEF may fund through their financial mechanisms.<sup>6</sup> For all other activities within the GEF focal areas, countries are eligible to receive GEF grants if they are eligible to borrow from the World Bank or to receive UNDP technical assistance.<sup>7</sup>

## **B. Replenishment**

6. GEF is funded by periodic contributions to the GEF Trust Fund from contributing participants, through a process by which the Trust Fund is replenished every four years. Governments negotiate both the total amount of each replenishment and the amount to be contributed by each Government. The fifth replenishment period (GEF-5) will begin on 1 July 2010. Negotiations on the fifth replenishment were scheduled to conclude at a meeting in Rome on 9 and 10 March 2010; at the time the present note was completed, however, they had not yet concluded and information on the total replenishment amount and its allocation among the GEF focal areas was not available. Additional information on the fifth replenishment is available at [http://www.thegef.org/gef/fifth\\_replenishment](http://www.thegef.org/gef/fifth_replenishment).

## **C. Chemicals and mercury programming for GEF-5**

7. The GEF Trust Fund supports measures in six focal areas: biological diversity, climate change, international waters, land degradation, ozone layer depletion and persistent organic pollutants. In addition, GEF may support sound chemicals management activities, provided that they achieve global environmental benefits and relate to one or more of the six focal areas.<sup>8</sup> In the past, the ability of GEF to support chemicals projects other than those directly related to persistent organic pollutants and ozone-depleting substances was limited, owing to a narrow interpretation of what kinds of chemicals management activities could satisfy the global environmental benefit and focal area requirements.

8. For GEF-5, GEF is taking a more comprehensive and integrated approach by including chemicals as one of its major programming areas. The GEF chemicals programme is intended to include persistent organic pollutants, the phase-out of ozone-depleting substances in countries with economies in transition<sup>9</sup> and some funding for mercury-related activities and activities under the Strategic Approach to International Chemicals Management.

9. In respect of mercury, paragraph 143 of the GEF secretariat's final GEF-5 programming document states as follows:

Mercury releases are relevant to the biodiversity and international waters focal areas, and there are potentials for synergies in relation to greenhouse gas emissions. The positive experiences from GEF's early work before the POPs convention was finalized indicate that early action to build capacity for reducing releases of mercury will also achieve good results.<sup>10</sup>

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Nations Industrial Development Organization. See GEF website, "GEF Agencies" (undated), [http://www.thegef.org/gef/gef\\_agencies](http://www.thegef.org/gef/gef_agencies).

5 GEF Instrument, article 2.

6 Except for enabling activities, all such funding channelled through the GEF Trust Fund is limited to incremental costs and must achieve global environmental benefits.

7 GEF Instrument, articles 9 (a) and (b).

8 *Ibid.*, art. 3.

9 GEF funding for the phase-out of ozone-depleting substances by countries with economies in transition fills a gap under the Montreal Protocol on Substances that Deplete the Ozone Layer because, as explained in chapter II, only developing countries meeting certain criteria are eligible for assistance from the Multilateral Fund.

10 Final GEF-5 programming document, 52, GEF/R.5/25 (12 Feb. 2010), [http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF\\_R5\\_%2025,%20Final%20GEF\\_5%20Programmin%20Document,%20Feb%2012,%202010.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF_R5_%2025,%20Final%20GEF_5%20Programmin%20Document,%20Feb%2012,%202010.pdf) (visited 25 March 2010).

10. Because existing funding obligations in respect of persistent organic pollutants and ozone-depleting substances must be met and, especially in the case of the former, expanded, the extent to which sound chemicals management and mercury may be funded during GEF-5 depends on the outcome of the replenishment negotiations. As noted above, information on the final outcome was not available at the time the present note was prepared.

11. The GEF-5 programming document suggested possible approaches to mercury funding based on three replenishment scenarios, all of which anticipated that the amount contributed to the GEF Trust Fund in the fifth replenishment would exceed in real terms (i.e., taking into account inflation and exchange rate effects) the amount contributed for the fourth replenishment. Under the three scenarios for total GEF-5 funding of \$4.5 billion, \$5.5 billion and \$6.5 billion, the amounts to be allocated to chemicals were suggested at the levels of \$450 million, \$550 million and \$660 million, respectively. The proposals for mercury were:

(a) *\$4.5 billion scenario*: \$10 million would be devoted to pilot country case studies for assessment-type activities to support the development of the mercury instrument;<sup>11</sup>

(b) *\$5.5 billion scenario*: \$20 million would support assessment-type activities, along with demonstrations of good practices for alternatives or mercury release reduction during negotiation of the mercury instrument. According to the GEF-5 final programming document, such activities would build experience in recipient countries, and prepare the GEF partnership and the international community for implementing the treaty when it is adopted. This is similar to the range of activities that the GEF supported in the years leading to, and during, the negotiations of the Stockholm Convention;<sup>12</sup>

(c) *\$6.5 billion scenario*: \$30 million would allow funding for projects to demonstrate good practices for alternatives or mercury release reduction priority activities in additional sectors.<sup>13</sup>

12. At the March meeting in Rome referred to above, the GEF secretariat was asked to prepare a revised programming document that included an additional scenario of \$3.8 billion–\$4.2 billion.

#### **D. Fourth overall performance study**

13. Each GEF replenishment is informed, in part, by an overall performance study prepared by the GEF Evaluation Office. The purpose of the fourth overall performance study was to determine the extent to which GEF was achieving its objectives and to identify potential improvements. The study found that in general GEF projects achieved a high level of satisfactory outcomes, that those outcomes showed a high level of progress towards producing global environmental benefits and that GEF was achieving its mandate and objectives. Among its main conclusions, the study observed that, while global environmental problems were worsening, funding for the environment in general and for GEF in particular had decreased in real terms. The study highlighted four dimensions of this phenomenon:

(a) GEF funding together with realized co-funding was far from sufficient to meet the estimated cost of solving global environmental issues;

(b) The conventions that GEF served had asked GEF to provide support to countries on issues, and at levels, that GEF had been unable to provide;

(c) The resources available to GEF had limited the extent to which it could demonstrate and scale up successful policies and approaches in least developed countries, small island developing States and fragile States;

(d) Long delays between project proposal and implementation would not be solved by changing to a resource allocation system (see below) because they were fundamentally related to underfunding.<sup>14</sup>

11 Ibid., p. 54, para. 152.

12 Ibid., p. 54, para. 157.

13 Ibid., p. 55, para. 161.

14 GEF Evaluation Office, "Main Conclusions and Recommendations of the Fourth Overall Performance Study of the GEF: Progress Toward Impact", 1, GEF/ME/C.36/Inf.1 (Oct. 2009), [http://www.thegef.org/gef/sites/thegef.org/files/documents/C.36.ME\\_Inf1\\_OPS4Section110909.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/C.36.ME_Inf1_OPS4Section110909.pdf). The study identifies additional factors that have contributed to these frustrating delays and makes recommendations for continued progress by GEF in addressing them.

## E. System for a Transparent Allocation of Resources

14. In its chapter on GEF, document UNEP(DTIE)/Hg/OEWG.2/3 discussed the GEF Resource Allocation Framework, which the GEF Council adopted in 2005 to make GEF funding allocations more equitable, transparent, predictable and effective. The report noted problems that had arisen regarding the implementation of the Framework.

15. Based upon the midterm review of the Framework, the GEF Council has decided to replace it with a new resource allocation system, the System for a Transparent Allocation of Resources (STAR). The overall objective of STAR in substance is the same as that of the Framework: “allocating resources to countries in a transparent and consistent manner based on global environmental priorities and country capacity, policies and practices relevant to successful implementation of GEF projects”.<sup>15</sup> During GEF-5, STAR will apply to the biodiversity, climate change and land degradation focal areas; it will not apply to any other focal areas or programmes.<sup>16</sup> The Council has agreed “that work [will] continue with a view towards developing a GEF-wide STAR in the future, if feasible, based, among other things, on a review of the STAR design and implementation to be carried out by the Office of Evaluation towards the end of the 3rd year of GEF-5”.<sup>17</sup>

16. STAR improves on the Resource Allocation Framework primarily because it addresses the burdens that small and less developed countries faced under the Framework. Details on these changes may be found in the GEF Council document entitled “System for a Transparent Allocation of Resources (STAR): Options and Scenarios”.<sup>18</sup>

## F. Special climate funds

17. The report on financial considerations and possible funding modalities prepared for the second meeting of the ad hoc open-ended working group on mercury (UNEP(DTIE)/Hg/OEWG.2/3) discusses two special climate funds that GEF administers, but which are not part of the GEF Trust Fund and are thus not funded through the GEF replenishment process. They are mentioned again in the present note because they may represent a hybrid approach for a financial mechanism under the mercury instrument. Under such an approach, a mercury fund could be established that shared some or all of the attributes of the stand-alone Multilateral Fund but was administered by GEF instead of by a newly created institution. Further information about the GEF special climate funds and their potential relevance to a mercury instrument may be found in section B of chapter II of document UNEP(DTIE)/Hg/OEWG.2/3 and in section E of chapter V of the present note.

## II. Update on the Multilateral Fund

18. Document UNEP(DTIE)/Hg/OEWG.2/3 includes a discussion of whether the structural elements of the Multilateral Fund for the Implementation of the Montreal Protocol might serve as a model for a financial mechanism for mercury. The document does not suggest that the Multilateral Fund itself might operate a financial mechanism for a mercury agreement, nor did the Open-ended Working Group on Mercury ever suggest such an idea. In the present note the main relevance of the Multilateral Fund continues to be as a possible model for a financial mechanism that would function under the authority of the parties to the mercury instrument.

19. The most prominent elements of the Multilateral Fund that make it distinctive include the following:

- (a) It is a dedicated fund that focuses on a single multilateral environmental agreement and issue;
- (b) It is replenished by contributions from donor countries assessed on the basis of the United Nations scale;

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15 GEF Council, “System for a Transparent Allocation of Resources (STAR): Options and Scenarios”, 3, GEF/C.36/6 (9 Oct. 2009), [http://www.thegef.org/gef/sites/thegef.org/files/documents/C.36.6%20STAR.FInal\\_.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/C.36.6%20STAR.FInal_.pdf).

16 GEF Council, “Joint Summary of the Chairs”, para 15 (a) (12 Nov. 2009), [http://www.thegef.org/gef/sites/thegef.org/files/documents/Joint%20Summary%20C.36\\_0.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/Joint%20Summary%20C.36_0.pdf).

17 Ibid., para. 16.

18 “System for a Transparent Allocation of Resources”, above, note 15.

(c) It is limited to paying the incremental costs of developing country parties to enable them to comply with the control measures of the Montreal Protocol;

(d) It operates under the ultimate control of the Meeting of the Parties of the Montreal Protocol.

20. If the intergovernmental negotiating committee chooses to consider the Multilateral Fund as a model for a mercury agreement financial mechanism it may wish to examine these important attributes of the Fund.

## A. Background

21. The Multilateral Fund is the only global environmental fund that is resourced through assessed contributions from donor country parties and is dedicated to providing financial assistance to developing countries in their implementation of a single multilateral environmental agreement. The Fund has never been replicated; subsequent multilateral environmental agreements have instead relied on GEF to operate their financial mechanisms.

22. The Montreal Protocol sets forth strict control measures that oblige parties to phase out the production and consumption of specified ozone-depleting substances according to an agreed timetable. The Protocol gives developing country parties that annually consume less than 0.3 kilograms per capita of ozone-depleting substances additional time to comply with its phase-out requirements. Such parties are referred to in the Protocol as “parties operating under paragraph 1 of Article 5” and are the only parties eligible for support from the Multilateral Fund.<sup>19</sup>

23. During the time leading up to the 1992 Rio Earth Summit, many stakeholders argued in favour of dedicated North-South financial mechanisms to help countries in the South implement the climate change and biological diversity conventions that were then being negotiated. Such arguments were based on the model and precedent of the Multilateral Fund. Most donor countries, however, objected to creating a new financial institution for every convention, in part because of the potential for fragmentation and proliferation of uncoordinated financing institutions and strategies. Proposals for a funding facility that would cover various multilateral environmental agreements thus emerged, which led to the establishment of GEF.<sup>20</sup>

24. A brief overview of some of the features of the Multilateral Fund, including its establishment, administration, source of funds and project application procedures, may be found in chapter III, section B, of document UNEP(DTIE)/Hg/OEWG.2/3.

## B. Replenishment

25. Much of the success of the Montreal Protocol may be traced to the level of financial resources that have been made available through the Multilateral Fund. Over the years, the Protocol has been able to sustain those resources in part because of 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 equitable burden-sharing inherent in its system of assessed contributions.

26. In 2009 the Multilateral Fund was replenished for the sixth time, in the amount of \$490 million for the triennium 2009–2011. As at October 2009, total pledges over the Fund’s lifetime amounted to \$2.55 billion.<sup>21</sup>

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19 For a list of parties operating under paragraph 1 of article 5, see Ozone Secretariat, “List of Parties categorized as operating under Article 5 paragraph 1 of the Montreal Protocol” (updated as at 23 September 2009), [http://ozone.unep.org/Ratification\\_status/list\\_of\\_article\\_5\\_parties.shtml](http://ozone.unep.org/Ratification_status/list_of_article_5_parties.shtml). Note that some countries with economies in transition are parties operating under paragraph 1 of article 5.

20 Second GEF Assembly, “Second Overall Performance Study of GEF”, 3 and 4, GEF/A.2/4 (2002), [http://gefweb.org/participants/Assembly/2nd\\_Assembly/OPS2\\_English-final-9602.pdf](http://gefweb.org/participants/Assembly/2nd_Assembly/OPS2_English-final-9602.pdf).

21 Executive Committee of the Multilateral Fund, “Financial Planning for the 2009–2011” (sic), 3 (2009), UNEP/OzL.Pro/ExCom/57/5, <http://www.multilateralfund.org/files/57/5705.pdf>; Executive Committee, “Status of Contributions and Disbursements”, 5 (2009), UNEP/OzL.Pro/ExCom/59/3, <http://www.multilateralfund.org/files/59/5903.pdf>.

### C. Special Funding Facility

27. Since the time when the report on financial considerations and possible funding modalities (UNEP(DTIE)/Hg/OEWG.2/3) was prepared for the second meeting of the Ad Hoc Open-ended Working Group on Mercury, there have been no major changes in the Multilateral Fund that affect it as a model of a stand-alone financial mechanism that could function under the direct authority of the parties to the mercury instrument. A development that may warrant notice, however, is the Montreal Protocol parties' consideration of a new special funding facility, to be capitalized initially with \$1.2 million returned to the Fund in connection with a concessional loan project. The contemplated mandate of the fund is to provide additional project support to parties operating under paragraph 1 of Article 5 for unspecified projects with climate benefits. The proposal is currently the subject of discussion within the Multilateral Fund's Executive Committee.<sup>22</sup>

28. Many ozone projects achieve significant climate benefits. Because climate benefits are not necessary to enable compliance with the control measures of the Protocol, however, project activities that yield them have generally not been eligible for support from the Multilateral Fund, which is limited by article 10 of the Protocol to providing support for parties operating under paragraph 1 of article 5 of the Protocol to enable their compliance with the control measures of the Protocol. Nevertheless, interest in achieving climate co-benefits through Montreal Protocol projects has gained traction. The Multilateral Fund Executive Committee thus envisions the Special Funding Facility as an instrument within the Protocol's financial mechanism but outside the Multilateral Fund.<sup>23</sup> While neither the Executive Committee nor the Meeting of the Parties has taken any final decisions, it is possible that the Special Funding Facility, if established, would be subject to those provisions of article 10 that apply to the financial mechanism generally but not to those provisions that apply specifically to the Multilateral Fund.<sup>24</sup> In particular, it is understood that the Special Funding Facility would not be funded from the assessed contributions of parties under paragraph 6 of article 10. As a result, there appears to be less concern regarding the prospect that the Special Funding Facility might fund activities that go beyond those necessary to enable compliance with the Protocol.

29. At the time that the present note was prepared, it was not clear what the ultimate status of the Special Funding Facility would be, to what uses it would be put or from where its revenues would come. Two contrasting observations may be made, however, regarding any possible contribution that the Facility might make to a mercury financial mechanism. On the one hand, the fact that the parties to the Montreal Protocol are considering the establishment of a fund in addition to the Multilateral Fund could mean that they are concerned that a stand-alone financial mechanism dedicated to addressing a single environmental issue may result in fragmented project financing, especially in respect of various environmental regimes to which they might be relevant. On the other hand, however, the potential of the Special Funding Facility to provide project support for both ozone-related and climate-related aspects of a project could help refute claims that dedicated mechanisms cannot respond to such challenges.

### III. Comparative advantages of the GEF and Multilateral Fund approaches

30. The present chapter summarizes some of the comparative advantages that the GEF and Multilateral Fund approaches might have in the context of a mercury instrument. The chapter discusses how each of the approaches might support various relevant objectives, including achieving an integrated approach and greater synergies, while minimizing operational costs; facilitating effective

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22 Executive Committee, "Facility for Additional Income from Loans and Other Sources (Decision 55/2)", para. 7, and annex I, para. 2, UNEP/OzL.Pro/ExCom/57/64 (2009), <http://www.multilateralfund.org/files/57/5764.pdf>.

23 The Montreal Protocol's financial mechanism includes, but is not limited to, the Multilateral Fund. See Montreal Protocol on Substances that Deplete the Ozone Layer, article 10.2 (1999, as adjusted and amended) ("The [financial] mechanism . . . shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation."), available in *Montreal Protocol Handbook* (2009), [http://www.unep.ch/ozone/Publications/MP\\_Handbook/MP-Handbook-2009.pdf](http://www.unep.ch/ozone/Publications/MP_Handbook/MP-Handbook-2009.pdf).

24 The Montreal Protocol provisions that apply generally to the financial mechanism are Article 10, paras. 1, 2, 9 and 10. Paragraphs 1 and 2 establish the mechanism and its possible components. Paragraph 9 sets out the decision-making procedures for the mechanism (including for the Multilateral Fund). Paragraph 10 states: "The financial mechanism set out in this Article is without prejudice to any future arrangements that may be developed with respect to other environmental issues." The remaining paragraphs in Article 10 apply specifically to the Multilateral Fund.

implementation; maximizing the sustained provision of financial assistance; and supporting responsive governance structures. The chapter closes by mentioning the possibility of a special mercury fund that could share some or all of the distinctive attributes of the Multilateral Fund but could be administered by GEF instead of by a newly created institution.

## **A. Integration, synergies and operational costs**

### **1. Integrated approach**

31. GEF has the potential to support activities in recipient countries that can help meet their commitments to more than one global convention or environmental issue. Even though GEF strategies are articulated by focal area and draw on guidance from each convention that GEF serves, project design and implementation activities could take advantage of synergies and connections across the focal areas, reflecting the multiple sustainable development needs of recipient countries. Such an approach might allow GEF and recipient countries to be strategic in project design, possibly yielding global environmental benefits from investments in a single focal area, avoiding trade-offs and negative impacts and increasing overall effectiveness, including cost-effectiveness.<sup>25</sup>

32. In the area of chemicals, the GEF-5 programming document seeks to enhance such synergies by placing all chemicals activities, including persistent organic pollutants, ozone-depleting substances, mercury and sound chemicals management, under a single chemicals programme. Such an integrated approach could, for example, facilitate the development of persistent organic pollutant projects relating to unintentional emissions of dioxins and furans, which could achieve co-benefits in the form of reduced mercury emissions.

33. With regard to achieving global environmental benefits across focal areas, an integrated financing approach could support expanding the scope of projects that address coal-fired power plants under the climate change focal area so that they include the incremental costs of associated measures aimed at the abatement of mercury emissions. Similarly, projects addressing mercury pollution from artisanal and small-scale gold mining could be designed also to achieve global benefits in (and financing from) the biodiversity, international waters and land degradation focal areas. Projects so designed would be better able to address some of the complex social and economic factors that underlie artisanal and small-scale gold mining than could projects that focused only on the mercury dimension of the problem. It should be noted that an approach like that of the Multilateral Fund need not preclude the financial mechanism of the mercury instrument from seeking additional funding from other sources, including GEF.

34. A financial mechanism and fund dedicated to a single issue cannot easily achieve such broad integration. In the case of the Montreal Protocol, the interest of parties in supporting projects that may achieve climate co-benefits has led to the consideration of a new structure under the Protocol's financial mechanism, the Special Funding Facility. Whether that facility, if adopted, will be effective or sustainable in facilitating ozone-climate synergies is not yet known; nevertheless, its ability to support a fully integrated approach to climate and ozone financing – let alone other potential areas – will be limited by the scope of the Montreal Protocol and the availability of funds dedicated to achieving climate co-benefits.

### **2. Cooperation and coordination**

35. In its decision 25/5, the UNEP Governing Council asked the intergovernmental negotiating committee to consider, among other things, the need to achieve cooperation and coordination and to avoid the unnecessary duplication of proposed actions with relevant provisions contained in other international agreements and processes.<sup>26</sup> That request accords with continuing efforts by the conferences of the Parties to the Basel, Rotterdam and Stockholm conventions to enhance synergies, cooperation and coordination within the chemicals and wastes cluster and to minimize institutional fragmentation and inefficiencies. This synergies process, in turn, complements broader efforts to reform and strengthen international environmental governance.

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25 Final GEF-5 programming document, p. 6.

26 Report of the United Nations Environment Programme Governing Council/Global Ministerial Environment Forum (A/64/25 (Supp)), annex I, decision 25/5, para. 28 (d), available at [http://www.chem.unep.ch/MERCURY/GC25/GC25Report\\_English\\_25\\_5.pdf](http://www.chem.unep.ch/MERCURY/GC25/GC25Report_English_25_5.pdf).

36. The three existing chemicals and wastes conventions presently have three different approaches to resource mobilization. Only one – the Stockholm Convention – has a formal financial mechanism, in which GEF serves on an interim basis as the principal entity entrusted with its operation. The three conventions are thus far from achieving a coordinated approach on financial assistance. The intergovernmental negotiating committee's consideration of a financial mechanism for the mercury instrument, particularly in respect of the institution that might operate it and the means by which it might be funded, may be influenced by the priority that States place on further promoting synergies and avoiding fragmentation within the chemicals and wastes cluster.

### 3. Operational costs

37. Economies of scale could result in the cost of administering a joint funding mechanism such as GEF being lower than the cost of administering of a dedicated fund. In the case of GEF and the Multilateral Fund this is true, but not dramatically so. The budgeted cost of administering GEF for the four years of its fourth replenishment period was about 2.97 per cent of the \$3.13 billion replenishment amount. The budgeted cost of administering the Multilateral Fund for the three years of its fifth replenishment period was about 3.43 per cent of the \$470.4 million replenishment amount.<sup>27</sup>

## B. Implementation

38. Whether a mechanism is modelled on GEF or the Multilateral Fund, the extent to which it is effective will be influenced significantly by the extent of the funding that is made available to it. Other factors are also relevant to the ability of a financial mechanism to enhance the implementation of the mercury instrument. They are discussed below.

### 1. Eligibility criteria

39. The eligibility of projects to receive funding from the Multilateral Fund is determined solely under the rules of the Montreal Protocol and the Fund, which are established by the Meeting of the Parties to the Protocol. Projects to implement the conventions that are served by GEF, by comparison, must satisfy both the rules laid down by the parties to those conventions and the eligibility criteria set out in the GEF Instrument, namely, the requirements of global environmental benefits and incremental costs. This fact has sometimes led to confusion and friction between GEF and some parties to those conventions.

### 2. Compliance

40. Under the Montreal Protocol, the purpose of the Multilateral Fund is to enable compliance with the Protocol by parties operating under paragraph 1 of article 5 (i.e., developing country parties). Thus, the Multilateral Fund is a fund intended to enable compliance rather than implementation, in contrast to the convention financial mechanisms operated by GEF. This means that the scope of projects that are eligible for support from the Multilateral Fund may be narrower than the scope of projects supported by GEF-operated financial mechanisms.

41. By fully integrating the Multilateral Fund into the Montreal Protocol, the parties to the Protocol have been able to use the Fund as a tool to facilitate compliance with the Protocol's commitments. Thus the Executive Committee, working with the Protocol's Implementation Committee, can condition access to funding from the Multilateral Fund on a party's compliance with its Protocol obligations. For example, the Executive Committee at its thirty-seventh meeting decided that it would not approve project proposals by parties in non-compliance with the control measures of the Montreal Protocol until the underlying issues of non-compliance had been dealt with by the parties through the Implementation

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<sup>27</sup> These figures result from, first, totalling the budgets that were approved for each year for each of the two replenishment periods and, second, dividing the sum of those budgets by the amount of the replenishments to which they relate. The fifth Multilateral Fund replenishment amounted to \$470.4 million for the triennium 2006–2008. The budgeted costs for administering the Fund and its Executive Committee during that triennium totalled \$16.1 million. Thus, the budgeted administrative costs were equivalent to about 3.43 per cent of the replenishment amount. The fourth GEF replenishment was \$3.13 billion to fund operations for the four-year period from July 2006 to June 2010. The GEF budgets for the fiscal years 2006, 2007, 2008, and 2009 (which included funding for the secretariat, Scientific and Technical Advisory Panel, the GEF Trustee, the GEF Evaluation Office and various special initiatives) totalled \$92.9 million, which was about 2.97 per cent of the replenishment.

Committee.<sup>28</sup> Similar arrangements have not been adopted under the conventions with GEF-operated financial mechanisms.

### 3. Substantive expertise and responsiveness

42. Both GEF and the Multilateral Fund rely on their implementing agencies for much of the technical expertise that they require to carry out their functions. The agencies for both overlap to a large extent, so they do not have appreciable differences in that respect.<sup>29</sup>

43. The Multilateral Fund secretariat focuses on project and financial management and monitoring relating solely to the Montreal Protocol; that focus has allowed it to develop deep, comprehensive expertise in ozone issues. That expertise, along with the decision-making practices of the Multilateral Fund Executive Committee and the relatively non-bureaucratic structure of the Fund, has resulted in an efficient and timely process for project development and approval.

44. The GEF secretariat enjoys an analogous level of expertise within its focal area divisions and clusters, with the added bonus of opportunities for synergies across its various focal areas. In the past, the relatively broad mandate of GEF, including its focal area approach to programming, may have contributed to complaints that it was insufficiently country-driven. The fourth overall performance study recommended that a shift toward national programming, begun with the introduction of the Resource Allocation Framework in 2006, should be completed. It also suggested that the Facility's reputation of "being unable to deliver" – stemming from the often overlong pre-implementation phase for projects – needed to be solved through completion of the reform process set in motion in 2006.<sup>30</sup> That said, the study also attributed delays in reaching the project implementation stage to a persistent lack of sufficient resources.

## C. Replenishment

### 1. Assessments and burden sharing

45. The Montreal Protocol obliges parties not operating under paragraph 1 of article 5 (i.e., developed country parties) to contribute to the Multilateral Fund on the basis of the United Nations scale of assessments.<sup>31</sup> This arrangement has resulted in a sustained, high level of contributions throughout the life of the Fund. The amount of each replenishment is based on a needs assessment and is agreed upon by the parties themselves. Thus, it is immediately apparent whether developed country parties are collectively adhering to their commitment, as stated in paragraph 1 of article 10, to "meet all agreed incremental costs of ... Parties [operating under paragraph 1 of Article 5] in order to enable their compliance with the control measures of the Protocol". This awareness may increase the negotiating leverage of all parties to ensure that replenishments are sufficiently funded.

46. Further, by specifying that the contributions of individual parties will be assessed according to the United Nations scale of assessments, the Protocol helps to depoliticize the question of burden sharing among donors. This, in turn, helps focus replenishment negotiations on the overall amount of the replenishment and whether it will meet the needs assessment.

47. In comparison, GEF replenishments are political negotiations conducted outside the conventions that GEF serves. The individual conventions may, under their memorandums of understanding with GEF, submit recommendations to GEF regarding the amount of funds necessary to assist developing countries to meet their commitments under the conventions.<sup>32</sup> GEF, however, is not required to adhere

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28 Executive Committee, report of the thirty-seventh meeting of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol, decision 37/20, para. 48 (a), <http://www.multilateralfund.org/files/3771.pdf>.

29 The implementing agencies for the Multilateral Fund are the World Bank, UNDP, UNEP and the United Nations Industrial Development Organization (UNIDO). The GEF implementing agencies are the World Bank, UNDP and UNEP; in addition, UNIDO is what is termed an "executing agency with expanded opportunities."

30 See the fourth overall performance study of GEF, p. 2.

31 Montreal Protocol, art. 10.6.

32 See, for example, the memorandum of understanding between the Conference of the Parties to the Convention on Biological Diversity and the Council of the Global Environment Facility, para. 5, <http://www.cbd.int/decision/cop/?id=7104>.

to those recommendations, and the nature of the replenishment negotiations precludes the conferences of the parties from having any direct control over them. An additional complication is that the conferences of the parties may not always fully understand what GEF can do in its capacity as operational entity of their financial mechanisms. As the fourth overall performance study observes, the conferences have sometimes asked GEF to provide support to recipient countries on issues and in amounts that GEF has not been able to provide.

## **2. Pooling financial assistance contributions**

48. By pooling the financial resources of all the GEF conventions into a single replenishment, individual donor States may more easily be able to cap their overall contributions than if they separately negotiate their contributions under each convention. This pooling effect may result in a lower overall amount available to the conventions and may intensify the competition between the conventions for GEF resources. Yet pooling may also make it easier for some donors to obtain funds through their domestic appropriations processes with which they can fully honour their pledges to GEF. Moreover, pooling provides a means by which every donor State can contribute to all the financial mechanisms that GEF operates, even if the State is not a party to one or more of the conventions served by those mechanisms.

## **D. Governance**

49. Unlike GEF, the Multilateral Fund is under the direct control of the parties to the convention that it serves. This element of the Fund may be its most distinctive, because it ensures that it operates under the authority of, and is ultimately accountable to, the Montreal Protocol's Meeting of the Parties. While the Fund is managed by the Executive Committee, the Committee operates under the direct supervision of the Meeting of the Parties, which sets its terms of reference and each year selects its members (who are drawn equally from among the parties operating under paragraph 1 of article 5 and the parties not so operating). Executive Committee meetings are usually held in conjunction with other meetings related to the Protocol. The Committee's double majority voting arrangement, required under Article 10 of the Protocol, ensures that neither donors nor recipients dominate the operations of the Fund, which may give recipients a greater role in decision-making than they have in the GEF Council. In practice, the Committee's decision-making has always been by consensus. The existence of the double-majority voting rule may well influence the ability of Committee members to achieve consensus.

50. In short, the Protocol's Meeting of the Parties is effectively the Multilateral Fund's governing body.<sup>33</sup> Because the Fund is a creation of the Protocol and exists only to serve the Protocol, it is accountable and responsive to the Protocol's parties in a manner that the design of GEF does not allow the latter to equal.

51. As an independently constituted facility, GEF is, legally and practically speaking, functionally autonomous from the conventions that it serves, the terms of the various memorandums of understanding between the conferences of the parties to those conventions and the GEF Council notwithstanding. Consequently, the conferences cannot exercise direct control over the entity that operates their financial mechanisms. That would probably not present a difficulty if all parties to the conventions were also members of the Council, and vice versa, and if all the parties shared equivalent decision-making powers in each of the forums. On the other hand, the broad participation in GEF of all major donor States provides a means by which all of them may contribute to the support of each convention that GEF serves, whether they are party to all those conventions or not. This possibility could be particularly beneficial when a major donor or group of donors has not ratified or acceded to one or more of the conventions.

## **E. Potential third way**

52. The report on financial considerations and possible funding modalities prepared for the second meeting of the Ad Hoc Open-ended Working Group on Mercury (UNEP(DTIE)/Hg/OEWG.2/3) mentions two special climate funds that are administered by GEF but are not part of the GEF Trust Fund

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33 See Multilateral Fund Secretariat, "Montreal Protocol Parties" (2003), [http://www.multilateralfund.org/montreal\\_protocol\\_parties.htm](http://www.multilateralfund.org/montreal_protocol_parties.htm).

and thus are not funded through the GEF replenishment process.<sup>34</sup> While the origin and purposes of these special funds is peculiar to the United Nations climate change negotiations, they may suggest an approach that could use some of the advantages present in each of the GEF and Multilateral Fund models. The intergovernmental negotiating committee could, if it wished, consider inclusion in the mercury instrument of a dedicated stand-alone fund that shared some or all of the distinctive attributes of the Multilateral Fund but was administered by GEF. Such a fund could, for example, feature a direct replenishment with contributions based on the United Nations scale of assessments; could be intended to enable compliance with the mercury instrument (rather than the arguably less comprehensive implementation of the instrument); and could be more directly responsive to the authority of the parties to the mercury instrument than the GEF-operated funds are to the parties of the conventions that they serve. In addition, such a GEF-administered fund would preclude the necessity of creating a new financial institution to operate the mercury financial mechanism.

53. The extent to which the parties to the mercury instrument might exercise control over a GEF-administered fund would depend, in part, on the memorandum of understanding or terms of reference under which it functioned. Nevertheless, it is reasonable to expect that the culture and practices of GEF would have some effect, so that the responsiveness of the fund to the wishes of the parties would be somewhere between that of the GEF-operated financial mechanisms and the Multilateral Fund.

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<sup>34</sup> See the report on financial considerations and possible funding modalities for a legally binding instrument or voluntary arrangement on mercury (UNEP(DTIE)/Hg/OEWG.2/3), chapter II, section B, [http://www.chem.unep.ch/mercury/oewg2/documents/c3%29/english/oewg2\\_3.pdf](http://www.chem.unep.ch/mercury/oewg2/documents/c3%29/english/oewg2_3.pdf).