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### Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products

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# Institutional and financial arrangements under Parts VI and VII of the negotiating text for a protocol to eliminate illicit trade in tobacco products

## Note by the Convention Secretariat

1. This document outlines possible options for the institutional and financial arrangements covered by Parts VI and VII of the negotiating text for a protocol to eliminate illicit trade in tobacco products,<sup>1</sup> as requested by the third session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products.<sup>2</sup> It also examines the financial implications of these options.

2. The options presented below are based on an initial paper produced by the Convention Secretariat on 29 October 2009 outlining practices found in other treaties (attached at Annex), and on comments received subsequently from Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC) including at a consultation with the Permanent Missions of the Parties held in Geneva on 11 December 2009.

### Summary of relevant practice in other treaties

3. This section provides a short summary of institutional and financial arrangements found in other relevant treaties (see Annex for more detail).

4. According to international practice, protocols to a convention may have their own institutional structures, such as a **meeting of the parties**. Alternatively, the conference of the parties of the parent

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<sup>1</sup> See document FCTC/COP/INB-IT/3/5 Rev.1.

<sup>2</sup> Decision FCTC/COP/INB-IT/3(1).

convention may undertake the functions of the meeting of the parties to the protocol. In such cases, the parties to the convention but not to the protocol usually participate as observers, and decisions under the protocol are taken only by those that are party to it. Meetings of the parties usually take place in conjunction with sessions of the conference of the parties; the first meeting of the parties to a protocol is often convened in conjunction with the session of the conference of the parties scheduled after the entry into force of the protocol.

5. Meetings of the parties generally have similar functions to conferences of the parties, such as keeping the protocol in question under regular review in light of its object and purpose, facilitating the exchange of information and technical and other assistance, establishing subsidiary bodies and adopting annexes to the protocol as required.

6. **Secretariats** of parent conventions in the cases reviewed generally also serve as the protocol secretariats. When a secretariat is serving both a parent convention and its protocol(s), provisions relating to its functions under the former generally apply *mutatis mutandis* to the latter, with additional functions specific to protocol implementation assigned to the secretariat of the parent convention.

7. In the examples of international practice reviewed, only parties to protocols pay **voluntary assessed contributions** for the administration and implementation of those protocols. When the voluntary assessed contributions are collected through the workplan and budget of the parent convention, the scales of assessment are different – for those that are parties only to the convention and those that are parties both to the convention and the protocol.

8. If a protocol has a workplan and budget that are independent from the workplan and budget of the parent convention, the meeting of the parties may establish one or more **trust funds** to be used exclusively for the purposes of that protocol. This is one of the most common forms of additional funding, aimed at facilitating the participation of developing countries and countries with economies in transition in meetings, and assisting them in implementing the protocol. The current generation of such funds (examples include the Global Environment Facility and The Ozone Fund) are financed through contributions by means of periodic replenishment exercises. In the context of these exercises, negotiations among donor countries are based on the principle that developed countries are committed to allocating funds to these mechanisms. The States concerned negotiate the scale of their contributions.

9. **Reporting mechanisms** exist under almost every protocol examined. The format and methodologies for reporting data are decided by the meeting of the parties, and there are various degrees of integration with the reporting arrangements existing under parent conventions. While some conventions establish reporting mechanisms that are applicable also to their protocol(s), the format and/or the submission cycles of the reports under the protocol(s) may still differ from those used for the convention.

10. Below are described possible options for institutional and financial arrangements with regard to the protocol under negotiation to eliminate illicit trade in tobacco products. These options are based on international practice and the experience gained in relation to the WHO FCTC.

## GOVERNANCE

### Meeting of the Parties to the protocol

#### *Option A. Meeting of the Parties to the protocol as a body separate from the Conference of the Parties to the WHO FCTC*

11. Under this option, the first session of the Meeting of the Parties to the protocol could be convened approximately six months after the entry into force of the protocol. It would be unnecessary to establish a body specifically to prepare this first Meeting of the Parties if preparations were undertaken under the auspices of the Conference of the Parties to the WHO FCTC. If the example of the Conference of the Parties is used, the second and third sessions would be convened annually, shifting to a cycle of every second year thereafter.

12. The costs associated with sessions of the Meeting of the Parties under this option would depend, inter alia, on the length of the sessions, the number of Parties provided with travel support, and on the volume of documentation produced (salary costs will be discussed below under “Secretariat”). If such costs were to be similar to those found in connection with the Conference of the Parties, the first Meeting of the Parties would cost approximately US\$ 800 000 (if held in Geneva), increasing to approximately US\$ 1.5–1.6 million for the second session and US\$ 1.8–1.9 million for the third and subsequent sessions.

#### *Option B. Conference of the Parties acting as the Meeting of the Parties*

13. Under this option, sessions of the Meeting of the Parties would take place in conjunction with – and as frequently as – sessions of the Conference of the Parties. They could be embedded into sessions of the Conference of the Parties, but the sessions could also be extended by one or two days to cover protocol-specific issues.

14. Savings would thereby be achieved on costs including those for interpretation, logistics, the provision of meeting records and travel. This option could lead to savings of up to two thirds of the cost of a separate Meeting of the Parties if no additional delegates required travel support, but only around one third if travel support were provided to additional delegates travelling specifically for the purpose of the Meeting of the Parties.

### Bureau

15. There would be no major additional costs associated with a bureau of the Meeting of the Parties, if the Bureau of the Conference of the Parties were to carry out the relevant functions, and assuming that the Parties represented on the Bureau of the Conference of the Parties were also Parties to the protocol. However, some slight increase in costs would probably result from the need to extend meetings to cover matters specific to the Meeting of the Parties.

16. If a separate bureau of the Meeting of the Parties were to be established, costs would mostly depend on the number of members residing outside Geneva. Based on the pattern of the Bureau of the Conference of the Parties, convening six meetings per biennium would cost around US\$ 150 000–180 000.

## SECRETARIAT

### *Option A. Convention Secretariat, with additional capacity, performing tasks related to the protocol*

17. The negotiating text envisages the Convention Secretariat performing secretariat functions with regard to the protocol.

18. The Convention Secretariat, with some additional capacity, would be in a position to carry out protocol-related tasks. The following could be covered by the existing capacity of the Convention Secretariat:

- (1) general management and administration
- (2) governing bodies and external relations
- (3) reporting arrangements
- (4) documentation (excluding translation costs)
- (5) general treaty and legal matters
- (6) general framework and tools for Party assistance, such as needs assessments
- (7) public health aspects of the protocol.

19. Additional staff would be required to cover protocol-specific issues that are not currently covered by the Convention Secretariat, such as criminal law, trade law, economic/tax administration and customs-related issues.

20. Four professionals to cover the above areas at P4/P5 level, supported by two administrative assistants (one to cover general administrative work and one to support additional work related to the functions of governing and subsidiary bodies), would constitute the additional staff required by the Convention Secretariat. This would result in additional salary costs of US\$ 1.1–1.15 million per year. One professional per area of expertise would be able to cover basic technical work and ensure that links were established and maintained with relevant international organizations. The Convention Secretariat would conclude cooperative agreements with such organizations as the United Nations Office on Drugs and Crime and the World Customs Organization for extended technical and capacity-building assistance. Cooperation with other international organizations may also be envisaged as implementation of the protocol progresses, such as the World Trade Organization, the World Intellectual Property Organization, and the United Nations Environment Programme.

21. If the protocol were also to assign further functions to the secretariat, such as the proposed information sharing focal point for the international track and trace regime, two additional information technology staff would be required, one at senior and one at junior professional level, with salary costs of approximately US\$ 350 000 per year. This would bring overall salary costs to US\$ 1.45–1.5 million annually (US\$ 2.9–3.0 million per biennium, although some US\$ 250 000–300 000 would be saved in the first biennium of 2012–2013 as recruitment would be undertaken gradually).

22. Recruitment of the above-mentioned staff would take place in phases. It is envisaged that only half of the required staff would be recruited in 2011, gradually, for advocacy and awareness-raising work and to provide expert advice on legal and technical matters during the ratification process and in preparation for the entry into force of the protocol. This would result in an additional staff budget of US\$ 550 000–600 000 in 2011.

*Option B. Separate secretariat for the protocol*

23. Establishing a separate secretariat would require the recruitment of at least six additional staff compared to the above “combined” secretariat option; they would include a head of the protocol secretariat, a senior legal officer, an administrative officer, an external relations and governance officer, a reporting officer and a documentation assistant, with salary costs amounting to approximately US\$ 1.2 million per year. Total salary costs under this option would therefore be US\$ 2.6–2.7 million per year, or US\$ 5.2–5.4 million per biennium.

24. In addition, time would be required to create the core capacity of the secretariat (from 1.5 to 2 years, based on the experience of the Convention Secretariat).

## PROTOCOL-SPECIFIC WORK

### Work preceding the entry into force of the protocol

25. Going by the experience of the WHO FCTC, it is likely that the Convention Secretariat would be expected to provide assistance on legal matters and to carry out regional and country-based awareness-raising work. Six regional workshops would probably need to be organized, one per region, as well as country-specific missions (on average, missions to 3–5 Parties per region would probably be required). The cost breakdown is as follows:

- |     |   |              |
|-----|---|--------------|
| (a) | Regional workshops (six)<br><i>Including travel support to one delegate per eligible Party (90 Parties), plus the travel costs of secretariat staff and experts, and related documentation and logistics costs, amounting, on average, to US\$ 125 000 per workshop</i> | US\$ 750 000 |
| (b) | Party missions (as requested; approximately 25 countries)<br><i>Including, on average, two experts per Party mission, to provide technical assistance to individual Parties</i>   | US\$ 250 000 |
| (c) | Development of software <sup>1</sup> and support documentation required to carry out information-sharing functions for the international track and trace regime<br><i>The cost would be higher if special requirements were</i>   | US\$ 400 000 |

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<sup>1</sup> The software would provide an interface between national/regional focal point(s) and the proposed international information-sharing focal point through a web-based secure channel (with, for example, user authentication by login/password), and would display the results of queries in text format. The international information-sharing focal point would query the national/regional focal point(s) (and vice versa) and would not store tracking information. At this stage, it is envisaged that the software will be developed in English.

*to apply, such as the use of multiple languages, specific communication channels in addition to the Internet etc., but these could be reviewed at a later stage after the requirements of the protocol are known*

- (d) Expert papers, including translation when needed US\$ 200 000  
*Including 6–8 expert papers on different provisions of the protocol*

**Total US\$ 1 600 000**

26. Half of this projected sum may need to be included in the 2011 budget of the Conference of the Parties, while the other half could be included within the 2012–2013 biennial budget. Therefore, in 2010, the fourth session of the Conference of the Parties may need to amend the existing 2010–2011 workplan and budget in order to accommodate the activities expected in 2011. The total additional budget required for 2011 would be in the range of US\$ 1.5–1.6 million (US\$ 550 000–600 000 staff costs, US\$ 800 000 for work taking place prior to entry into force of the protocol, and programme support cost of 13% payable to WHO).

### **Implementation assistance**

27. While in 2011 technical assistance would involve work aimed at supporting the entry into force of the protocol, as outlined above, implementation assistance is likely to be required starting from the 2012–2013 biennium. Going by the experience of the Conference of the Parties, some US\$ 1.2 million would be required for implementation assistance to developing country Parties and Parties with economies in transition in the biennium 2012–2013.

28. On the assumption that the protocol enters into force by the end of 2012, technical assistance costs amounting to approximately half of this sum would be needed in 2013 (in addition to the approximately US\$ 800 000 which, as mentioned above, would still be required in 2012 for continued awareness-raising and legal/technical assistance prior to the entry into force of the protocol). Some savings could be made by combining implementation-assistance missions and meetings covering provisions of both the WHO FCTC and the protocol.

### **Meeting of the Parties**

29. As the first session of the Meeting of the Parties may take place in conjunction with the fifth session of the Conference of the Parties, additional costs would be limited to protocol-specific documentation (approximately US\$ 150 000–200 000 based on current estimates), unless the fourth session of the Conference of the Parties were to create an additional intergovernmental process to prepare the first session of the Meeting of the Parties and/or to extend the fifth session of the Conference of the Parties to cover protocol-related agenda items.

### **Subsidiary bodies**

30. The Meeting of the Parties may create subsidiary bodies, such as working groups, in which case the resulting budget estimates would be presented to the Meeting of the Parties. If the first Meeting of the Parties were to create a bureau and 2–3 subsidiary bodies to work on different provisions of the protocol (as is likely), additional costs would come to around US\$ 400 000–500 000 (the cost of two meetings per subsidiary body consisting of 15–20 Parties each, and the work of the bureau, based on the experience of the Conference of the Parties).

## Reporting arrangements

Two options may be considered by the Parties to the protocol.

31. First, the Meeting of the Parties could establish a reporting instrument exclusively for the protocol. The Meeting of the Parties in this case could follow, with modifications, the model of the reporting instrument being used by the Parties to the WHO FCTC.

32. Second, since reporting on Article 15 is obligatory anyway, Parties to the protocol could be requested to submit additional protocol-specific reporting through an annex attached to the principal reporting instrument of the Convention. Even in this case, for reasons of synergy, the format of the annex could be based on the WHO FCTC reporting instrument and the timing of reports harmonized with those of the Convention.

33. The choice of option and subsequent arrangements will determine the cost implications; however, there should not be substantial additional costs regarding the secretariat in either scenario, unless the Meeting of the Parties establishes an intersessional intergovernmental mechanism/body for the elaboration of a new reporting instrument for the protocol and/or new requirements for the review and analysis of Party reports.

## Overall additional costs

34. The overall (estimated) additional cost for the 2012–2013 biennium would be as follows:

Salaries	US\$ 2 600 000
Technical assistance related to pre-entry into force (2012)	US\$ 800 000
Technical assistance related to implementation (2013)	US\$ 600 000
Meeting of the Parties	US\$ 200 000
Subsidiary bodies	US\$ 450 000
Programme support cost (13%) payable to WHO	US\$ 600 000
<b>Total</b>	<b>US\$ 5 250 000</b>

## FINANCIAL IMPLICATIONS FOR PARTIES

There are two possible scenarios.

35. In the first scenario, all Parties to the WHO FCTC, irrespective of whether they have ratified the protocol or not, pay protocol-related costs as part of their voluntary assessed contributions to the WHO FCTC (which would be extended to include these protocol-related costs).

36. In the second scenario, only Parties to the protocol would pay costs related to the protocol, through, for example, a separate scale of voluntary assessed contributions.

37. For the 2012–2013 biennium only the first scenario is likely, as it is probable that the entry into force of the protocol will not take place before the start of that biennium. The fourth session of the Conference of the Parties would therefore need to consider taking on the costs related to preparation for the entry into force of the protocol, before the first session of the Meeting of the Parties. This is in line with the experience of the WHO FCTC: in that case, the World Health Assembly made arrangements for the period until the first session of the Conference of the Parties.

38. In subsequent bienniums (starting from 2014–2015), the funding mechanism should be considered in light of Article 33.5 of the WHO FCTC which states that “*only Parties to a protocol may take decisions on matters exclusively relating to the protocol in question*”.

39. As mentioned above, the minimum costs that can reasonably be expected for 2012–2013 would amount to US\$ 5.25 million.

40. In subsequent bienniums (starting from 2014–2015), the above amount may be considered to be a reasonable minimum, taking into account the fact that the costs of work undertaken prior to entry into force in 2012 (US\$ 800 000) would be replaced by additional technical assistance costs, as the number of Parties requiring implementation support and the complexity of technical assistance required would grow, as well as by the growing documentation costs of the Conference of the Parties acting also as the Meeting of the Parties (if a separate Meeting of the Parties were established, an additional US\$ 1–1.2 million would be required).

41. In 2012–2013, when all Parties to the Convention may need to share costs related to the protocol, the voluntary assessed contributions of Parties to the Convention would increase by approximately 60% compared with the current volume of voluntary assessed contributions if all costs, including technical assistance, were to be attributed to voluntary assessed contributions. The increase would be approximately 40% if only the treaty administration costs (salaries, documentation and work related to subsidiary bodies) were to be attributed, leaving technical assistance costs to separate mechanisms, such as special trust funds for implementation assistance to developing countries and countries with economies in transition. The above amounts would further decrease to approximately 55% and 35% respectively if no subsidiary bodies were created in 2012–2013.

42. If the protocol were to enter into force in 2012, an optimistic but reasonable supposition, then funding for the 2014–2015 biennium could be considered at the fifth session of the Conference of the Parties, to be convened most probably in the second half of 2012.

## ANNEX

INSTITUTIONAL AND FINANCIAL ARRANGEMENTS UNDER PARTS VI AND VII  
OF THE NEGOTIATING TEXT FOR A PROTOCOL TO ELIMINATE  
ILLICIT TRADE IN TOBACCO PRODUCTS**Review of relevant practice in other treaties****Introduction**

This review of relevant practice in other treaties was prepared in accordance with the decision of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products requesting the Convention Secretariat to prepare a document reflecting the options for the institutional and financial arrangements addressed in Parts VI and VII of the negotiating text, and the financial implications of implementing those options.<sup>1</sup> The document has been prepared with the support of external experts.<sup>2</sup>

**Relationship between parent conventions and their protocols**

The “parent convention and protocol” approach is used extensively in, among others, the dynamic field of environmental law.<sup>3</sup> Although concluded in accordance with conventional treaty-making processes, it has called for the development of new types of treaty structures and mechanisms. “[T]he principal function of a framework convention is to establish a general system of governance for a specific area and not detailed obligations. Subsequently, protocols build on the parent framework convention through the elaboration of additional or more specific commitments and institutional arrangements”.<sup>4</sup> A parent convention and its protocol(s) establish a regulatory regime comprising normative and institutional aspects. That regime, combined with national procedures allows the treaty to evolve.

Normative and institutional aspects also feature in the relationship itself between a parent convention and its protocol(s). Although a protocol can be a free-standing agreement, the term “protocol” is generally used to refer to a treaty that is ancillary or supplementary to another treaty: adding to, implementing, clarifying, interpreting or modifying provisions in that other treaty as between certain

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<sup>1</sup> See document FCTC/COP/INB-IT/3/5 Rev.1 (5 July 2009) and decision FCTC/COP/INB-IT/3(1).

<sup>2</sup> Professor Laurence Boisson de Chazournes, University of Geneva, and Professor Vera Gowlland-Debbas, Graduate Institute of International and Development Studies, Geneva.

<sup>3</sup> The following legal instruments are examined in this paper: the United Nations Framework Convention on Climate Change (Climate Change Convention) and its Kyoto Protocol; the Convention on Biological Diversity (Biodiversity Convention) and its Cartagena Protocol on Biosafety (Biosafety Protocol); the Vienna Convention for the Protection of the Ozone Layer (Ozone Convention) and its Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol); the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Convention) and its Protocol on Water and Health; the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Hazardous Wastes Protocol). Reference is also made to the United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

<sup>4</sup> Document A/FCTC/WG1/3.

of the parties. Such protocols emerge from the regular provisions governing treaty adoption. A State party to a parent convention is not bound by its protocol(s) unless it becomes a party to it/them. Protocols, like any other treaty, have their own adoption, signature and ratification processes. Similarly, protocols negotiated and adopted by a Conference of the Parties (COP) are usually approved by consensus or by a two-thirds or three-quarters majority yet require a certain number of ratifications to enter into force. That number is seldom identical to what is required by the parent instrument.<sup>5</sup>

Protocols can be comprehensive in scope or focus more narrowly on just one of the issues addressed by the parent convention. Unless otherwise stipulated, they tend in practice to be subordinate to that convention, which may be specified in the protocol by stating that some of the provisions of the parent convention apply to it *mutatis mutandis*.<sup>6</sup> However, this does not mean a protocol cannot deviate from the parent convention, in accordance with the Vienna Convention on the Law of Treaties, when it contains specific provisions to that effect.

The close relationship between parent conventions and their protocols stems also from the fact that their membership, although not identical, is usually linked. Protocols are generally open only to states that are party to the parent convention. Article 16.1 of the Ozone Convention, for instance, stipulated that no State can “become a party to a protocol unless it is, or becomes at the same time, a Party to the Convention”. The same principle applies under Article 24 of the Kyoto Protocol and Article 23.1 of the Barcelona Convention. The 1967 Protocol relating to the Status of Refugees is an exception to this rule as it can be signed and ratified by any State, not just the Parties to the 1951 Convention. In general, States that are parties to a parent convention but not to its protocol may participate in the work of the latter and its subsidiary bodies as observers.

According to some parent conventions, such as the Barcelona Convention (Article 28.4), the Climate Change Convention (Article 25.3), the Biodiversity Convention (Article 38.3) and the Ozone Convention (Article 19.4), any parties withdrawing from the convention are considered as having also withdrawn from its protocol(s). The Barcelona Convention furthermore considers withdrawal from a protocol as amounting to withdrawal from the Convention (Article 28.5), although this is specific to its unique provisions under which the Parties to that Convention must also be party to at least two of its protocols.

The following addresses specific issues arising from the institutional arrangements, financial resources and reporting requirements set out in Parts VI and VII of the negotiating text for a protocol to eliminate illicit trade in tobacco products.

### **Relationship between conferences and meetings of the parties**

In view of the substantive links between parent conventions and their protocols, and between their respective memberships, it is understandable that joint meetings and institutions are normally the preferred option.

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<sup>5</sup> The Convention on the Protection and Use of Transboundary Watercourses and International Lakes and its Protocol on Water and Health, however, both require ratification by 16 Parties to enter into force.

<sup>6</sup> See common Article 1 of the three protocols to the United Nations Convention against Transnational Organized Crime, for example, which states, *inter alia*, that the offences established under those protocols are regarded as offences established in accordance with the Convention.

### *Meeting of the Parties*

Protocols to a convention may have their own institutional structures such as a meeting of the parties (MOP). This is not always the case. The three protocols to the United Nations Convention against Transnational Organized Crime (UNTOC), for example, do not have a MOP because the Conference of the Parties (COP) has decided to carry out the functions assigned to it in Article 32 of the Convention with respect to its protocols.<sup>7</sup>

The MOP can have its own rules of procedure or it may be regulated by the same rules of procedure as the COP. The latter happens when a COP is serving as the MOP to a protocol, in which case the rules of procedure of the COP apply *mutatis mutandis* to the MOP. Examples of this include the Kyoto Protocol (Articles 13.1 and 13.5) and the Biosafety Protocol (Articles 29.1 and 29.5). The Hazardous Wastes Protocol, for its part, operates under the rules of procedure and financial rules adopted for its parent Barcelona Convention (Article 17.2). Every other MOP examined here has its own rules of procedure.

In most cases, except for the Kyoto Protocol and the Biosafety Protocol, the MOP is independent from the COP to the parent convention.<sup>8</sup> It should be noted, however, that meetings of the MOP ordinarily take place in conjunction with – and as frequently as – meetings of the COP, even when it is the COP that is serving as the MOP; although the MOP may decide to convene an extraordinary meeting at a time when no COP meeting is being held.<sup>9</sup>

The first meeting of the parties to a protocol is often convened in conjunction with the first meeting of the COP scheduled after the date of the entry into force of that protocol. Provisions to that effect can be seen in Article 13.6 of the Kyoto Protocol, Article 29.6 of the Biosafety Protocol and Article 11.1 of the Montreal Protocol.

### *Functions of the MOP*

While parent conventions and their protocols are regulated by traditional treaty rules, the COPs and MOPs, which are composed of states parties, differ from treaty bodies established under human rights treaties, for example, which are composed of experts whose competence does not extend beyond interpretation and implementation of their treaty. Both COPs and MOPs are commonly granted consensus or majority-based decision-making powers in matters of an organizational and procedural nature, which allows them to organize meetings, to adopt rules of procedure and to approve funding.

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<sup>7</sup> See decisions 1/5 and 1/6 adopted by the COP at its first session on 8 July 2004, for example, according to which it decided to “carry out the functions assigned to it in Article 32 of the United Nations Convention against Transnational Organized Crime with respect to the [protocols on trafficking in persons and the smuggling of migrants], by, *inter alia*, establishing a programme of work that it will review at regular intervals”.

<sup>8</sup> See Article 11 of the Montreal Protocol, Article 16 of the Protocol on Water and Health, and Article 15 of the Hazardous Wastes Protocol.

<sup>9</sup> Article 11.2 of the Montreal Protocol, for instance, states that “[...] ordinary meetings of the parties shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party [...]”. Article 13.7 of the Kyoto Protocol is couched in similar terms, and Article 29.7 of the Biosafety Protocol is practically identical.

MOPs generally have similar functions to the COP in that they are responsible for keeping the instruments under which they are established under regular review in the light of their object and purpose. They are entitled to take the decisions deemed necessary for the effective implementation of those instruments and the achievement of their objectives by establishing the appropriate mechanisms. For example, they may promote the exchange of information; request States to submit reports in specific formats and at specific times on their efforts to meet their obligations; and they can facilitate those efforts by mobilizing voluntary contributions or providing technical and other assistance, including through cooperation with other international and regional organizations (see *Relations between the MOP and intergovernmental organizations and institutions below*).

Another function of the MOP is to establish permanent subsidiary bodies, such as a bureau, to assist them in the performance of various tasks. The subsidiary bodies of a COP may also serve a protocol when that COP is serving as the MOP. Article 30.1 of the Biosafety Protocol, for example, states that “[a]ny subsidiary body established by or under the [Biodiversity] Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol ...”.

MOPs may be assigned wide-ranging functions by a protocol. Article 11.4(j) of the Montreal Protocol, for example, authorizes the MOP to “consider and undertake any additional action that may be required for the achievement of the purposes of [that] Protocol”; and Article 29.4 of the Biosafety Protocol states that the COP serving as the MOP shall make, within its mandate, the decisions necessary to promote its effective implementation”.

MOPs may also adopt annexes to a protocol containing technical and administrative details required for its effective implementation. Unlike substantive amendments, these do not require ratification and are binding on all parties not notifying their non-acceptance within a given period of time. Examples of this can be seen in Article 21.5 of the Kyoto Protocol or Article 30 of the Biodiversity Convention (with reference to the Biosafety Protocol). The procedure laid down in Article 2.9 of the Montreal Protocol for “adjustments” with regard to controlled substances appears to be the most wide-ranging in that binding decisions, while generally requiring adoption by consensus, can, as a last resort, be adopted by a two-thirds majority.

### *Interaction between COPs and MOPs in decision-making*

Conventions and protocols have a symbiotic relationship. A protocol may be a treaty in its own right, meaning that the negotiating parties can define its scope and subject matter, but it is also an instrument of the parent convention and, as such, shares its object, purpose and functions.

In some cases, the protocol contains explicit provisions concerning normative linkages with the parent convention. Common Article 1 of the protocols to the United Nations Convention against Transnational Organized Crime (UNTOC), for example, states that those protocols “shall be interpreted together with the Convention”; that “the provisions of the Convention shall apply, mutatis mutandis, to [them] unless otherwise provided [t]herein”; and that “[t]he offences established in accordance with [them] shall be regarded as offences established in accordance with the Convention”. Under Article 32 of the Biosafety Protocol, the latter is subject to the provisions contained in Articles 27 to 30 of the Biodiversity Convention on settlement of disputes and the adoption and amendment of protocols and annexes. The same goes for the Montreal Protocol vis-à-vis Articles 8 to 11 of the Ozone Convention (pursuant to Article 14 of the Protocol). As for the Kyoto Protocol, Article 19 states that “the provisions of Article 14 of [the Climate Change] Convention on settlement of disputes shall apply, mutatis mutandis, to this Protocol”.

Where decision-making bodies exist, the relationship between a convention and its protocol(s) is in a state of flux. Article 35.6 of the negotiating text for a protocol to eliminate illicit trade in tobacco products states that Article 23.5 of the WHO Framework Convention on Tobacco Control shall apply *mutatis mutandis* to that protocol, subject to any modifications decided by the MOP. Given that the MOP has the same functions as the COP in respect of its particular instrument, conflicting decisions are always likely. This raises the question of how to iron out the conflict and which body shall prevail.

On the one hand, with respect to organizing meetings of a COP serving as the MOP, an emphasis is placed on the independence of the protocol from the parent convention. Usually, the Parties to the convention but not to the protocol may participate in the proceedings only as observers, and decisions under the protocol are taken only by those that are party to it. Examples of such provisions can be seen in Article 29.2 of the Biosafety Protocol and Article 13.2 of the Kyoto Protocol. Article 29.3 of the Biosafety Protocol states that any member of the COP bureau not representing a Party to that Protocol “shall be substituted by a member elected by and from among the Parties ...”. Hence, only a COP serving as the MOP would appear to have the authority to judge the compatibility and consistency of a protocol with its parent convention, especially in terms of its scope and the decisions taken under it; and similarly, only a COP serving solely under the convention and not as the MOP, has the authority to judge whether parties to the convention have contravened their obligations under that instrument.

On the other hand, to the extent that protocols share the objectives, and may be designed to help implement one or more provisions of the parent convention – together with the fact that parties to the protocol are also parties to, and bound by obligations under, the convention – the COP serving as the MOP must ensure that the protocol and the decisions taken under it are in conformity with the parent convention. The same considerations apply when the MOP meets independently of the COP, since the parties are likewise parties to the main convention, although this may present the secretariat with practical difficulties in terms of coordination and dissemination of information.

In theory, the relationship between conventions and protocols is governed by the provisions of the Vienna Convention on the Law of Treaties. In addition to the general rules of interpretation under Articles 31.1 and 31.2 of that Convention, Article 31.3 subparagraph (c) provides for the harmonization of conventions and protocols in accordance with the overall coherence of the system by stating that a treaty should also be interpreted in the light of “any relevant rules of international law applicable in the relations between the parties”.

At the same time, “a protocol that clearly exceeds the scope of the initial convention may represent a ‘backdoor amendment’ of the latter, whereby parties to the convention may find themselves assuming obligations that they did not intend to assume when they negotiated it” (FCTC/COP/INB-IT/3/INF.DOC/6). Article 41 of the Vienna Convention on the Law of Treaties accepts modification of a treaty through an *inter se* agreement, provided that it is not expressly prohibited by that treaty and it “(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; [and] (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole”. However, the overriding principle is one of compatibility and mutual support between a parent convention and an additional protocol. This should be the guiding principle when interpreting a given instrument in order to avoid making conflicting decisions.

## Financial arrangements of parent conventions and their protocols

### *Budgetary provisions and financial arrangements*

The adoption of a new protocol necessarily implies new institutional arrangements and raises the question of its financial resources. The parties may decide whether the new protocol and its parent convention should have separate or common budgets and scales for the assessment of contributions. If the former, the protocol will normally include its own specific financial commitments, while the latter is generally feasible if all the parties to the convention are parties to the protocol.

It is necessary to identify what is required specifically for the protocol and what can be shared with the parent convention. Some resources can be directly attributed to the protocol whereas others serve to support both the protocol and the parent convention and cannot be separated. Some costs will be common to both.

When parties decide to create a new Secretariat for a protocol the costs are greater than if they use the existing Convention Secretariat, as additional staff will have to be recruited exclusively for the purposes of the protocol. Usually, conventions and protocols have a single secretariat performing functions under both instruments, with the administrative costs of the two instruments being borne separately by the parties to each. Examples of this include the Ozone Convention and its Montreal Protocol. Similarly, Article 24.1 subparagraph (b) of the Biodiversity Convention assigns the secretariat to serve as the secretariat to its Biosafety Protocol; and Article 31.3 of the latter states that “[t]o the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end”. Furthermore, Article 13.5 of the Kyoto Protocol states that the financial procedures of the Climate Change Convention “shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol”. These procedures concern the preparation and approval of the budget. The Executive Secretary of the Climate Change Convention has proposed a budget<sup>10</sup> on the understanding that the COP and MOP would need to adopt decisions approving or endorsing it, and that there would be separate indicative scales of contributions for Parties to the Convention and to the Protocol. In effect, “the fact that not all Parties to the Convention are also Parties to the Protocol necessitates some differentiation in the contribution regime [and] Parties to the Protocol will contribute to both the Convention and the Kyoto Protocol, whereas those Parties that have not ratified the Kyoto Protocol will contribute to the Convention only” (FCCC/SBI/2009/2).

### *Voluntary assessed contributions*

The various activities of every convention and protocol reviewed in this document are financed through voluntary contributions from their parties. Only parties to the protocols pay the voluntary assessed contributions (VAC) for the administration and implementation of those protocols. When the VAC are acquired through the workplan and budget of the convention, the scales of contributions are different – yet always based on pre-existing scales – for those that are parties only to the convention and those that are parties both to the convention and to the protocol. This allows parties to a protocol to contribute to its funding through a separate and independent channel. Hence, as indicated above,

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<sup>10</sup> Based on COP decisions 16/CP.9 of 12 December 2003 and 11/CP.10 of 9 December 2005.

parties to a convention have to pay VAC for that convention while parties to both the convention and its protocol have to pay further VAC for the protocol.

### *Core trust funds*

The COP or MOP, at their first meeting after the entry into force of a convention or protocol, establish a core trust fund for financing the permanent infrastructure, namely the COP or MOP, their subsidiary bodies and the secretariat. Contributions from the parties are based on a scale of assessments established by the COP or MOP. Most of the instruments examined in this document also have a fund to support participation of developing countries and countries with economies in transition in meetings. Contributions to that fund are made on a voluntary basis (see *Relations between the MOP and intergovernmental organizations and institutions below*).

The case of the Biodiversity Convention and its Biosafety Protocol deserves special attention. The core administrative costs of the COP to the Convention, its subsidiary bodies and secretariat are met on a biennial basis from a general trust fund or “core budget” (also known as the BY Trust Fund). That budget, managed by UNEP in keeping with the Financial Rules of the Convention, covers costs such as staff salaries, overtime and emoluments; rental and maintenance of premises; staff travel; conference services; equipment and supplies; communication costs; reporting costs; consultants and temporary assistance. It is financed from contributions made by Parties to the Convention according to a scale of assessments established by the COP every biennium, based on the scale used for the apportionment of the expenses of the United Nations; and from additional contributions made by the Parties and non-Parties, intergovernmental and nongovernmental organizations and other sources. The core budget for the Protocol’s work programme is considered within the overall budget of the Convention.<sup>11</sup>

If a protocol has a workplan and budget that are independent from the workplan and budget of the parent convention, the MOP may, at its first session, establish one or more trust funds to be used exclusively for the purposes of that protocol. This is one of the most common forms of additional funding. An example of independent budgets for parent conventions and protocols can be seen in the Ozone Convention and its Montreal Protocol. The Ozone Convention is financed through a United Nations trust fund managed by UNEP. The Montreal Protocol, for its part, is financed through another, ad hoc, trust fund established by the MOP and operated by a dedicated secretariat.<sup>12</sup>

Both core trust funds and trust funds devoted to other issues are operated by pre-existing specialized agencies such as the United Nations Economic Commission for Europe (for the UNECE Convention and its Protocol on Water and Health), WHO (for the Protocol on Water and Health) and UNEP (Ozone Convention); by especially established bodies such as the Executive Committee of the Multilateral Fund of the Montreal Protocol; or by an existing entity such as the Global Environment Facility (GEF) (for the Biodiversity Convention and Biosafety Protocol, which share the same financial mechanism,<sup>13</sup> and for the Climate Change Convention and Kyoto Protocol, which also share

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<sup>11</sup> See COP 6 Decision VI/29.

<sup>12</sup> Decision I/14 adopted at the First Meeting of the Parties on 5 May 1989.

<sup>13</sup> See Article 28.2 of the Protocol, which refers to Article 21 of the Convention (“Financial Mechanism”), and MOP Decision BS-I/10 of 27 February 2004.

the same financial mechanism<sup>14</sup>). The institution responsible for the administration of a trust fund performs its functions in accordance with the decisions and guidelines of the COP and MOP for the allocation of financial resources.

## Secretariat

In general, the secretariat of the parent convention also serves as secretariat of the protocol. Examples of this include the Climate Change Convention and its Kyoto Protocol; the Biodiversity Convention and its Biosafety Protocol; the Ozone Convention and its Montreal Protocol (the so-called Ozone Secretariat); and the Barcelona Convention and its various protocols. The UNECE Convention and its Water and Health Protocol represent a notable exception to the rule in that they have separate arrangements: the Executive Secretary of UNECE performs secretariat functions for the Convention, while such functions are performed jointly for the Protocol by the Executive Secretary and the WHO Regional Director for Europe.

The secretariat for most conventions and protocols is hosted by an existing international organization such as UNEP for the Biodiversity Convention and Biosafety Protocol, the Ozone Convention and Montreal Protocol, and the Barcelona Convention and its protocols. In the case of the UNECE Convention and its Protocol on Water and Health, the secretariat is hosted respectively by UNECE and UNECE in conjunction with WHO. The Climate Change Convention and its Kyoto Protocol are the only instruments reviewed in this document that have an autonomous secretariat.

Typically, a secretariat will conduct studies, prepare the budget, prepare draft decisions for the COP or MOP, provide technical assistance, receive and circulate implementation reports, and perform any other functions specified by a convention, its protocol(s), the COP or the MOP.

When a secretariat is serving both a parent convention and its protocol(s), provisions relating to its functions under the former will apply *mutatis mutandis* to the latter, in addition to which it will also have the functions assigned to it under the protocol to perform.<sup>15</sup> Examples include the Ozone Secretariat and the Secretariat of the Biodiversity Convention (SCBD), whose various constituent units deal with both convention and protocol issues in social, economic and legal matters, scientific, technical and technological matters, implementation and technical support, and resource management and conference services. On the other hand, SCBD, for instance, also has a distinct biosafety unit for protocol-related policy and legal matters, socio-economic and trade matters, scientific matters, capacity-building and outreach, the Biosafety Clearing House and information sharing.<sup>16</sup>

The Ozone Secretariat performs functions assigned to it under Article 7 of the Ozone Convention together with the distinct functions set out in Article 12 of the Montreal Protocol. Article 7.1 subparagraph (c) of the Convention states that it shall “perform the functions assigned to it by any

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<sup>14</sup> According to Article 21.3 of the Convention, the GEF is the “international entity entrusted with the operation of the financial mechanism referred to in Article 11”; and according to Article 11.2 of the Protocol, “[t]he guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph”.

<sup>15</sup> See Article 14.2 of the Kyoto Protocol, Article 8.2 of the Climate Change Convention and Article 31.2 of the Biosafety Protocol.

<sup>16</sup> See <http://www.cbd.int/secretariat/structure/>.

protocol”, but it has no distinct unit for protocol-related matters, which are to be addressed by the same units dealing with matters concerning the parent Convention.

In view of the particular nature of the future protocol to eliminate illicit trade in tobacco products, two areas can be considered from the experience of UNTOC within the framework of criminal law enforcement in terms of the provision of legal assistance to ensure compliance and legal cooperation across borders. The United Nations Office on Drugs and Crime, which also services the protocols to that Convention, has established a Division for Treaty Affairs that works with Member States to advise them on the drafting and adoption of drug control and crime prevention legislation, for example, and to assist governments in ratifying the conventions concluded within its framework. It also has a Legal Advisory Programme that promotes the practical implementation of those conventions and, acting on the basis of requests from States Parties, strives to advise on the drafting, adoption and application of all necessary legislation and to strengthen the skills of professionals working in the justice system to ensure they have the technical information required for enforcing their laws.

### **Relations between the MOP and intergovernmental organizations and institutions**

COPs and MOPs may also have the authority to enter into arrangements with international organizations and states, thereby fostering synergy between different systems in such a way as to enable normative work under one system to influence normative work under another.

Agreements relating to the fulfilment of commitments and requiring financial assistance, capacity-building and cooperation between various parent conventions or protocols and other international organizations may be informal or based on formal arrangements. This raises the question of the extent to which the COPs or MOPs have the requisite international legal personality to enter into binding agreements.

A parent convention may contain explicit provisions on treaty-making capacity. Article 7.2 subparagraph (l) of the Climate Change Convention authorizes the COP to “[s]eek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies”; while Article 8.2 subparagraph (f) empowers the secretariat to “enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions”.

Among the most common arrangements are those made with the international organizations that will be hosting a convention or protocol secretariat. These are designed to regulate their mutual relationship, which may be based on parallel decisions by the COP and the organs of the host organization.

Other cooperative arrangements range from the granting of reciprocal observer status at meetings to the establishment of new types of relations. The Biodiversity Convention, for instance, requires the COP to contact the executive bodies of other relevant conventions and to establish “appropriate forms of cooperation with them” (Article 23.4 subparagraph (h)). This provision has formed the basis of memoranda of cooperation with the secretariats of, inter alia, the Convention on Wetlands of International Importance (Ramsar Convention), the Convention on the Conservation of Migratory Species of Wild Animals (CMS Convention), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The memorandum of cooperation with the Ramsar Secretariat is called an “agreement” and termination requires six months notice in writing, which could be taken to indicate its binding nature, despite the fact that memoranda of cooperation are

not usually binding.<sup>17</sup> The Biodiversity Convention has also established cooperative links with other relevant conventions such as the International Plant Protection Convention and the International Treaty on Plant Genetic Resources for Food and Agriculture; with United Nations agencies such as UNDP, UNEP, FAO and UNESCO; and with various nongovernmental and indigenous organizations. The Biosafety Protocol benefits from such links.

Cooperation with relevant international entities is also an important feature of the Climate Change Convention, and of particular benefit to its Kyoto Protocol, with the COP seeking to ensure that the climate change-related activities of those entities are in keeping with the Convention. Links have been established with the other Rio Conventions, namely the Biodiversity Convention and the United Nations Convention to Combat Desertification, and cooperation between the three secretariats has been strengthened through the establishment in 2001 of a Joint Liaison Group. Initiatives taken include the drafting of technical papers and reports on the connection between climate change, biodiversity and desertification. Links have also been established with the Montreal Protocol and the Intergovernmental Panel on Climate Change (IPCC).<sup>18</sup>

The COPs of the Climate Change Convention and Biodiversity Convention have signed memoranda of understanding with the Council of the Global Environment Facility (GEF).<sup>19</sup>

Cooperative links exist between the Montreal Protocol, United Nations specialized agencies, the International Atomic Energy Agency, and various governmental and nongovernmental bodies competent in the field of the ozone protection, which are invited to attend meetings of the Parties as observers (see Article 11.5 of the Protocol).

The UNECE Convention is one of a series of instruments concluded under the auspices of the United Nations Economic Commission for Europe, which serves as secretariat both to the Convention and its protocols. As such, it has close links with that organization and with the other instruments, such as the Convention on the Transboundary Effects of Industrial Accidents and the Convention on Environmental Impact Assessment in a Transboundary Context.

## **Resources for implementation**

Technical and financial assistance has evolved over time to encompass both the more traditional goal of development aid, namely to help developing countries overcome technical difficulties by providing emergency relief or setting-up training programmes, as well as new types of projects such as the financing of investment projects aimed at benefiting the global environment.

Some of the protocols examined in this document have created one or more special funds to facilitate the participation of developing countries and countries with economies in transition in meetings, and to assist them in their efforts to implement the agreements. Contributions to those funds are voluntary.

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<sup>17</sup> Memorandum of Cooperation between the Convention on Wetlands and the Convention on Biological Diversity (10 May 2005): [http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-31-115^16062\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-31-115^16062_4000_0__).

<sup>18</sup> See paragraph 17 of decision VII/15 adopted by the Biodiversity Convention COP at its seventh meeting on 20 February 2004.

<sup>19</sup> See document FCCC/CP/1996/9 of 21 May 1996, and decision III/8 adopted by the Biodiversity Convention COP at its third meeting on 15 November 1996.

The first meeting of the Parties to the Biosafety Protocol, for instance, in decision BS-I/10, established the General Trust Fund for the Core Programme Budget, the Special Voluntary Trust Fund for the Additional Voluntary Contributions in Support of Approved Activities, and the Special Voluntary Trust Fund for Facilitating Participation of Developing Country Parties, in particular the Least Developed and the Small Island Developing States amongst them, and Parties with Economies in Transition. These trust funds are managed by GEF and evaluation relating to activities under the Protocol will be taken up by the COP serving as the MOP.

The first meeting of the Parties to the Protocol on Water and Health established two trust funds to receive voluntary contributions from Parties, Signatories and other States, and from regional economic integration organizations and other partners to support the promotion and effective implementation of the Protocol. The United Nations Technical Cooperation Trust Fund is managed by the UNECE secretariat in accordance with the United Nations Financial Rules and Regulations; and the Voluntary Fund is managed by the WHO Regional Office for Europe in accordance with WHO financial rules.<sup>20</sup> It should be noted that the Protocol does not have a core trust fund and secretariat expenses are covered by UNECE and WHO.

The MOP to the Montreal Protocol, for its part, established under Article 10 of that Protocol a financial mechanism that includes a Multilateral Fund to meet the requirements of Parties on a grant or concessional basis.<sup>21</sup> The fund is managed by an Executive Committee and a dedicated secretariat located in Canada. It has juridical personality and it enjoys any necessary privileges and immunities in the territory of Canada.<sup>22</sup> In addition, the MOP has established a United Nations Trust Fund to provide financial support to the Protocol “in accordance with the Financial Regulations and Rules of the United Nations and in accordance with the General Procedures governing operations of the Fund of the United Nations Environment Programme”.<sup>23</sup> It is managed by UNEP and receives voluntary contributions from, inter alia Parties and States not party to the Protocol.

It should be noted that GEF and the Multilateral Fund of the Montreal Protocol are special financial mechanisms with a specific governance system and endowed with larger amounts of funding. Their activities are carried out in conjunction with guidelines and criteria laid down by the COPs and MOPs of the relevant treaties; and they determine the eligibility criteria for the allocation of grants and concessional funding and decide on policy and programme priorities. The activities of their executive bodies, such as the GEF Council and the Executive Committee of the Multilateral Fund, conform with the priorities established by the relevant COP or MOP.

## **Reporting, monitoring and evaluation**

A common means of promoting convention or protocol implementation is to establish reporting, compliance and information-exchange mechanisms. Such mechanisms are sometimes established by a protocol and not by its parent convention. Examples of this include the compliance mechanism provided for in Article 8 of the Montreal Protocol, and the reporting procedure and compliance mechanism established under Articles 7 and 15 of the Protocol on Water and Health.

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<sup>20</sup> See doc. ECE/MP.WAT/2 and ECE/MP.WAT/1997/13.

<sup>21</sup> See decision IV/18 adopted by the MOP at its fourth meeting on 25 November 1992.

<sup>22</sup> See decision VI/16 adopted by the MOP at its sixth meeting on 7 October 1994.

<sup>23</sup> See decision I/14 adopted on 5 May 1989.

### *Reporting mechanisms*

Reporting mechanisms exist under almost every protocol examined. Article 7 of the Kyoto Protocol requires States Parties to submit annual inventories of anthropogenic emissions to be reviewed by expert review teams (Article 8). Article 33 of the Biosafety Protocol requires States Parties to report on measures taken to implement the Protocol. Article 7 of the Montreal Protocol establishes a reporting mechanism under which each State Party is to provide the Secretariat, with data on its production, imports and exports of each controlled substance.

The format and methodologies for reporting data are decided by the MOP. Article 7.5 of the Protocol on Water and Health requires Parties to provide to the secretariat a summary report of the data collected and evaluated pursuant to Article 7.1, together with an assessment of the progress achieved in their efforts to implement the Protocol. Article 5 of the Ozone Convention establishes a reporting mechanism that is applicable both to the Convention and to the Montreal Protocol yet subject to adjustment by the COP and MOP. In particular, the COP, in decision VCI/2, decided that Parties to the Convention must submit a report every two years in a format prepared by the Secretariat; whereas the MOP, in decision I/11, decided that reports under the Protocol should be submitted annually.

Under Article 32.5 of UNTOC, States Parties are required to provide the COP with “information on its programmes, plans and practices, as well as legislative and administrative measures to implement [that] Convention, as required by the Conference of the Parties”. The secretariat is mandated under Article 33.2 to assist them in this task, upon request. As mentioned earlier, there is no separate MOP for the UNTOC protocols. The Convention and its protocols do have separate reporting mechanisms – with separate questionnaires covering different sets of issues – but the reporting cycles are the same. The reports are all dealt with at the same time by the same unit within the secretariat, which facilitates coordinated work. A proposal has been made for the secretariat to develop comprehensive software-based information-gathering tools for the Convention and each of its protocols.<sup>24</sup>

As for the Hazardous Wastes Protocol, there are no provisions in the text for a reporting procedure, but Article 26 of its parent Barcelona Convention does require Parties to submit reports relating to all of the protocols to that Convention.

Reporting procedures for the Kyoto Protocol and the Biosafety Protocol are independent from the reporting procedure under their parent conventions. Parties to the Biosafety Protocol are required by Article 33 to report exclusively on implementation of the Protocol, and the format and timing provided by the COP serving as the MOP pursuant to decision BS-I/9 are independent from the format and timing for the COP under the Biodiversity Convention.<sup>25</sup> The procedure for meeting the requirements of Article 7 of the Kyoto Protocol has been detailed in the annex to decision 15/CMP.1 adopted by the COP serving as the MOP to the Protocol.<sup>26</sup>

In view of the possibility of reports being submitted by Parties to agencies or entities operating outside the context of the agreements under review the secretariat of UNTOC has recommended that the COP consider areas of synergy between reporting requirements under the Convention and its protocols and

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<sup>24</sup> See document CTOC/COP/2008/7.

<sup>25</sup> In particular, Parties are expected to submit reports two years after the entry into force of the Protocol and then every four years. The report has to be submitted to the COP serving as the MOP at least twelve months before it meets.

<sup>26</sup> The annex is entitled “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol”.

other reporting mechanisms in related areas; judicial cooperation; reporting by Member States on action taken to follow up on declarations and plans of action adopted by various United Nations congresses on relevant matters; and ways of avoiding duplication in reporting requirements and making optimal use of the information reported.<sup>27</sup>

### *Compliance mechanisms*

Protocols may contain provisions for establishing procedures relating to compliance, which may include the setting up of a compliance committee. Examples include the Kyoto Protocol,<sup>28</sup> the Biosafety Protocol,<sup>29</sup> the Montreal Protocol<sup>30</sup> and the Protocol on Water and Health.<sup>31</sup> The Hazardous Wastes Protocol contains no such provisions because Article 21 of the Barcelona Convention is also applicable to its protocols.<sup>32</sup> UNTOC and its protocols do not have a compliance mechanism although plans to develop one are under consideration.

Compliance committees are responsible for ensuring that all parties comply with their obligations under a protocol and for addressing cases of non-compliance. The Compliance Committee established under the Kyoto Protocol, for example, is composed of a facilitative branch to promote compliance, and an enforcement branch to determine consequences for Parties not meeting their commitments. The Compliance Committee of the Biosafety Protocol can take a number of measures such as providing advice or assistance to the Party concerned; making recommendations to the COP-MOP regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures; and requesting or assisting the Party concerned to develop a compliance action plan.<sup>33</sup>

### *Information-exchange mechanisms*

Another mechanism frequently found in the conventions and protocols examined here concerns the exchange of information among parties. Such mechanisms are often combined with a convention or protocol's reporting mechanisms. Under the Climate Change Convention and the Kyoto Protocol, for example, the reporting of data, which are to be made public, amounts to an exchange of information among the Parties.<sup>34</sup> The same goes for the Protocol on Water and Health, which calls on the Parties to collect and evaluate data on their progress in implementing the Protocol and to publish the results periodically (Article 7). The other conventions and protocols all contain provisions on the compulsory exchange of technical, scientific, legal and other information among the parties.

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<sup>27</sup> See document CTOC/COP/2008/2.

<sup>28</sup> See Article 18 of the Protocol and CMP decision 2/CMP.1 (document FCCC/KP/CMP/2005/8/Add.1).

<sup>29</sup> MOP decision BS-I/7 (27 February 2004).

<sup>30</sup> MOP Decision III/2 of 21 June 1991.

<sup>31</sup> Article 7 of the Protocol. A Compliance Committee has been established by decision of the MOP at its first meeting. See document ECE/MP.WH/2007/L.2 EUR/06/5069385/13 of 30 November 2006, entitled "Compliance Procedure under the Protocol on Water and Health", available at <http://www.unece.org/env/documents/2007/wat/wh/ece.mp.wh.2007.L2.e.pdf>.

<sup>32</sup> Article 21 of the Barcelona Convention reads: "The Contracting Parties undertake to cooperate in the developing of procedures enabling them to control the application of this Convention and the Protocols".

<sup>33</sup> See decision BS-I/9 adopted by the COP-MOP on 26 February 2004.

<sup>34</sup> See Article 4 of the Climate Change Convention and Article 7 of the Kyoto Protocol.

The Biosafety Protocol has an interesting mechanism for the exchange of information among States Parties: the Biosafety Clearing House, which is based on the clearing-house mechanism referred to in Article 18.3 of the parent Convention.<sup>35</sup> Its aim is to facilitate the exchange of information on living modified organisms and to assist Parties to comply with their obligations under the Protocol, thereby forging a link between compliance and information-exchange mechanisms. Another example of the latter can be seen in Article 11 of the Hazardous Wastes Protocol to the Barcelona Convention, which requires States Parties to inform one another, through UNEP, “of measures taken, of results achieved and, if the case arises, of difficulties encountered in the application of this Protocol”.

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<sup>35</sup> See Article 20 of the Biosafety Protocol.

## APPENDIX

CONVENTIONS	Climate Change Convention	Biodiversity Convention	Ozone Convention	UNECE Convention	Barcelona Convention
<b>Parties</b>	193	191	196	36	21
<b>Bodies</b>	<ul style="list-style-type: none"> <li>- Climate Change Secretariat (Article 8)</li> <li>- COP</li> <li>- COP Bureau</li> <li>- COP subsidiary bodies: <ul style="list-style-type: none"> <li>- Subsidiary Body for Scientific and Technological Advice (SBSTA)</li> <li>- Subsidiary Body for implementation (SBI)</li> </ul> </li> <li>- Consultative Group of Experts (CGE)</li> <li>- Expert Group on Technology Transfer (EGTT)</li> <li>- Least Developed Countries Expert Group (LEG)</li> </ul>	<ul style="list-style-type: none"> <li>- Secretariat (hosted by UNEP pursuant to COP Decision I/4)</li> <li>- COP</li> <li>- Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)</li> <li>- Working Group on the Review of Implementation (WGRI)</li> <li>- Working Group on Access &amp; Benefit Sharing</li> <li>- Working Group on Article 8(j)</li> <li>- Working Group on Protected Areas</li> </ul>	<ul style="list-style-type: none"> <li>- Ozone Secretariat (functions carried out by UNEP)</li> <li>- COP</li> <li>- COP subsidiary bodies: <ul style="list-style-type: none"> <li>- Bureau</li> <li>- Meeting of Government Research Managers (COP Decision I/6)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Secretariat (Executive Secretary of the UNECE)</li> <li>- MOP</li> <li>- MOP Bureau</li> <li>- Working Group on Water Management</li> </ul>	<ul style="list-style-type: none"> <li>- Secretariat (UNEP)</li> <li>- Meeting of the Contracting Parties</li> <li>- Bureau of the Contracting Parties</li> </ul>
<b>Relations with other international entities</b>	<ul style="list-style-type: none"> <li>- Global Environment Facility (GEF) and its implementing agencies (UNDP, UNEP, World Bank)</li> <li>- Intergovernmental Panel on Climate Change (IPCC)</li> <li>- Biodiversity Convention</li> <li>- Desertification Convention</li> <li>- Montreal Protocol</li> </ul>	<ul style="list-style-type: none"> <li>Cooperation and partnership with: <ul style="list-style-type: none"> <li>- Rio Conventions</li> <li>- Biodiversity-related conventions</li> <li>- International organizations (UNDP, UNEP, FAO, UNESCO)</li> <li>- NGOs</li> <li>- Indigenous organizations</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- UNEP</li> <li>- WMO (COP decision VCI/6)</li> <li>- UN specialized agencies, including IAEA (Article 6.5)</li> </ul>	<ul style="list-style-type: none"> <li>- Other UNECE conventions (e.g. on Transboundary Effects of Industrial Accidents; Environmental Impact Assessment in a Transboundary Context)</li> <li>- UNECE Joint Bodies in Europe and North America</li> </ul>	
<b>Budgetary provisions and resources for implementation</b>	<ul style="list-style-type: none"> <li>Financial mechanism operated by GEF and accountable to the COP, Composed of: <ul style="list-style-type: none"> <li>- Trust Fund for the Core Budget</li> <li>- Trust Fund for Supplementary Activities</li> <li>- Trust Fund for Participation in the UNFCCC Process</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Financial mechanism operated by GEF</li> <li>- Trust funds created by COP and operated by Secretariat: <ul style="list-style-type: none"> <li>- General Trust Fund (UN scales of assessment)</li> <li>- Special Voluntary Trust Fund for approved activities</li> <li>- Special Voluntary Trust Fund for Facilitating Participation of Parties</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>UN Trust Fund managed by UNEP (COP decisions VCI/9 and VCI/10)</li> </ul>	<ul style="list-style-type: none"> <li>General trust and Trust funds managed by UNECE and financed by voluntary contributions from States Parties</li> </ul>	<ul style="list-style-type: none"> <li>On a voluntary basis, (Article 24.2)</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>- Article 4</li> <li>- Article 12</li> </ul>	<ul style="list-style-type: none"> <li>Periodic reports to COP on status of implementation (Article 26)</li> </ul>			<ul style="list-style-type: none"> <li>Article 26</li> </ul>
<b>Compliance</b>		<ul style="list-style-type: none"> <li>No specific mechanism, but monitored through: <ul style="list-style-type: none"> <li>- National Biodiversity Strategies and Action Plans (NBSAP)</li> <li>- National reports (Article 26)</li> <li>- Clearing-House Mechanism (CHM) Article 18</li> </ul> </li> </ul>			<ul style="list-style-type: none"> <li>Article 27</li> </ul>
<b>Inter-Party Cooperation</b>		<ul style="list-style-type: none"> <li>CHM (Article 18.3)</li> </ul>	<ul style="list-style-type: none"> <li>Article 4</li> </ul>	<ul style="list-style-type: none"> <li>Part II (Articles 9–16)</li> </ul>	
<b>Exchange of information</b>		<ul style="list-style-type: none"> <li>Article 17</li> </ul>	<ul style="list-style-type: none"> <li>Articles 4 and 5; Annex II; COP Decision VCI/2</li> </ul>	<ul style="list-style-type: none"> <li>Article 6,13, 14, 17.2(b)</li> </ul>	

PROTOCOLS	Kyoto Protocol	Biosafety Protocol	Montreal Protocol	Protocol on Water and Health	Hazardous Wastes Protocol
<b>Parties</b>	184	156	196	23	21
<b>Bodies</b>	<ul style="list-style-type: none"> <li>- Climate Change Secretariat</li> <li>- COP serving as meeting of the Parties (CMP)</li> <li>- CMP subsidiary bodies (same as COP)</li> <li>- CMP Bureau (same as COP)</li> <li>- Clean Development Mechanism (CDM) Executive Board</li> <li>- Joint Implementation Supervisory Committee (JISC)</li> <li>- Compliance Committee</li> </ul>	<ul style="list-style-type: none"> <li>- Secretariat (same as Convention)</li> <li>- Conference of the Parties serving as the meeting of the Parties (COP-MOP)</li> <li>- COP-MOP Bureau</li> <li>- SBSTTA</li> <li>- Compliance Committee</li> <li>- Ad Hoc Group on Liability and Redress</li> </ul>	<ul style="list-style-type: none"> <li>- Ozone Secretariat</li> <li>- MOP</li> <li>- Executive Committee of the Multilateral Fund</li> <li>- Implementation Committee</li> </ul>	<ul style="list-style-type: none"> <li>- Secretariat: (Executive Secretary of UNECE and Director of WHO Regional Office for Europe)</li> <li>- MOP</li> <li>- Compliance Committee</li> </ul>	<ul style="list-style-type: none"> <li>- Convention secretariat</li> <li>- MOP (in conjunction with Convention MOP)</li> </ul>
<b>Relations with other international entities</b>	Same as Convention	Same as Convention			
<b>Budgetary provisions and resources for implementation</b>	Same as Convention. Financial mechanism composed of same trust funds plus: <ul style="list-style-type: none"> <li>- Adaptation Fund (for projects/programmes in developing country Parties; financed from proceeds from CDM projects)</li> </ul>	<ul style="list-style-type: none"> <li>- Same financial mechanism as Convention (Article 28.2)</li> <li>- General Trust Fund for Core Programme Budget</li> <li>- Special Voluntary Trust Fund in Support of Approved Activities</li> <li>- Special Voluntary Trust Fund for Participation of DC Parties and Parties with Economies in Transition</li> </ul>	<ul style="list-style-type: none"> <li>- Multilateral Fund (Article 10: MOP decisions IV/18 and VI/16)</li> <li>- UN Trust Fund (MOP decision I/14)</li> </ul>	<ul style="list-style-type: none"> <li>- United Nations Technical Cooperation Trust Fund (managed by UNECE Secretariat)</li> <li>- WHO-EURO Voluntary Fund (managed by WHO Regional Office for Europe)</li> </ul>	
<b>Reporting</b>	Annual emission inventories National registries CDM registry (Articles 5, 7 and 8)	Periodic reports to COP-MOP (Article 33)	Annual submissions of data to Secretariat (Article 7)	Article 7	
<b>Compliance</b>	Compliance Committee	Compliance Committee (Article 34; COP-MOP decisions BS-I/7, BS-I/9)	Article 8	Articles 7 and 15	
<b>Exchange of information</b>		Biosafety Clearing-House (BCH)	Art. 10A		Article 11

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