

IUCN and GRID-Arendal present a briefing note from AFRIPAC  
Dr Alexandra Harrington, IUCN WCEL Agreement on Plastic Pollution Task Force

## Financing Mechanism Options for the International Legally Binding Instrument on Plastic Pollution

### I. Introduction

Financing has been an important issue throughout the meetings of the Intergovernmental Negotiating Committee (INC) to facilitate the adoption of an international legally binding instrument on plastic pollution (ILBI), including in the marine environment. Since INC4 in April 2024, this has become a particular area of focus and was the topic of one of the two Expert Groups convened for intersessional work in August 2024. Although there were no agreed upon suggestions for financing mechanisms to be forwarded to INC5 in November 2024 at the end of the intersessional meetings, it has become clear that there are strong arguments for each of the potential financing mechanisms outlined in the Compilation Document which will serve as the basis for the INC5 negotiations. At the same time, there is an apparent need for States and stakeholders to become familiar with the existing financing mechanisms from other treaty regimes which have been suggested as potential models for used in the ILBI context.

This brief is intended to fill this knowledge gap by examining the proposed financing models in the Compilation Document text before providing an analysis of relevant existing treaty-based funding mechanisms. The latter analysis includes details on the authorizing terms under the applicable treaties as well as the steps taken by subsequent Conferences of the Parties (COPs) to amplify and entrench these financing mechanisms. The treaty regimes examined are the *Montreal Protocol*, the *High Seas Treaty/Biodiversity Beyond National Jurisdiction Agreement*, the *Minamata Convention on Mercury*, the *Convention on Biological Diversity* and the Kunming-Montreal Global Biodiversity Framework, the *Stockholm Convention on Persistent Organic Pollutants*, and the *United Nations Framework Convention on Climate Change*. Finally, the brief offers conclusions and recommendations for consideration in advance of and during INC5.

### II. Proposed Options in the ILBI Compilation Document

There are a number of proposals for the financing mechanism aspects of the Compilation Document (Part III.1 of the Compilation Document). Many aspects of these proposals contain either binding or voluntary commitments by State Parties to the Treaty in terms of providing funding to the mechanism and being able to access the financing mechanism. Within these proposals, much of the focus is on whether developing countries, least developed countries, Small Island Developing States and other classifications of countries should be absolved from providing funds and/or be the only countries eligible for funding from the financing mechanism.

In terms of the financing mechanism itself, there are three options presented in the Compilation Document.

### **a) *Standalone Financial Mechanism***

In Part III.1 (4), there is a proposal that the financing mechanism would officially be created under the auspices of the Treaty and intended to support the implementation of the Treaty's terms. In Part III.1 (5), it is proposed that the financing mechanism operate under the oversight and control of the governing body of the Treaty, typically referring to the Conference of the Parties (COP). In OP5 quinquies, there is an additional proposal to create an Executive Committee within the Treaty governance system to implement policies and practices needed for the administration and oversight of funding disbursed under the financing mechanism.

In Part III.1 OP6, it is proposed that the financing mechanism be created as a dedicated entity within the Treaty governance system. This would be compatible with the proposed governance features in Part III.1 (5).

### **b) *Placement Under an Existing Entity***

In Part III.1 OP6 alt, it is proposed that the financing mechanism for the Treaty be placed under the auspices of the Global Environment Facility or a similar international organization that would serve as the administering entity. As OP7 alt provides, there would be a requirement that the governing body adopt a MOU to allow for an international organization to host the financing mechanism.

### **c) *Hybrid Model***

Part III.1 OP6 alt 2 proposes a hybrid model in the sense that, at the beginning, the Treaty's financing mechanism would be administered by an international organization but that there would also be a dedicated Plastics Implementation Fund and Plastics Remediation Fund which would, over time, be able to migrate to control by an independent financing mechanism under the Treaty's governance system. Throughout the Part III.1 OP7 variants and into (8), there are several proposals that would allow for the financing mechanism to receive public and private funds, including those from international and regional banking and financing entities.

## **III. Examples from Past and Current Practice**

### **a) *Montreal Protocol***

As originally adopted in 1987, the Montreal Protocol contains two critical articles for establishing a financing mechanism to support the implementation of its terms, namely Articles 10 and 5.

In Article 5, the Montreal Protocol acknowledges the "special circumstances of developing country parties." In Article 5(1), the Montreal Protocol establishes a limited exemption to the phased requirements to comply with the overall treaty terms where 1) a country is classified as a developing country, and 2) the country has an "annual calculated level of consumption of the controlled substances [that] is less than .3 kilograms per capita on the date of entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol . . . in order to meet its basic needs." It also provides in Article 5(3) that "The Parties undertake to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to Parties that are developing countries for the use of alternative technology and for substitute products."

Subsequently, in Article 10 of the Montreal Protocol there is a simple provision that relates to the provision of technical assistance to developing country State Parties. From this very general commitment came a rapid focus on the development of a financing mechanism to provide technical assistance and other forms of support to developing country State Parties. Thus, by the London Amendment to the Montreal Protocol, adopted during the Second Meeting of the Parties (MOP) in 1990, the text of Article 10 was officially replaced with a dedicated article on the establishment and functioning of a Financial Mechanism. In this new text, Article 10(1) provides:

The Parties shall establish a mechanism for the purposes of providing financial and technical cooperation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

To accomplish this, a dedicated Multilateral Fund was established in 10(2), along with the possibility of the creation of additional funding mechanisms as the State Parties deemed appropriate. The Multilateral Fund was specifically charged with several functions, critical among them to act as the clearing-house facility for funding to assist Article 5 countries in exploring their technical needs and implementing associated measures, conducting research, training, workshops and related other forms of outreach relating to the Montreal Protocol, coordinating technical cooperation, and “facilitate and monitor other multilateral, regional and bilateral co-operation available to parties that are developing countries.” Further, the London Amendment established an Executive Committee for oversight and governance of the Multilateral Fund and provides that the “Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the cooperation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise.” In this way, the London Amendment expanded the reach of the financing mechanism under the Montreal Protocol to facilitate a working relationship with other, established multilateral financing institutions and UN agencies.

In terms of funding sources, the London Amendment established a voluntary national contribution requirement for non-Article 5 State Parties, to be assessed using the UN assessment scales for States. Further, it should be noted that subsequent decisions established an Interim Multilateral Fund to function between 1991 and 1993 and, ultimately, was incorporated into the larger Multilateral Fund that was subsequently established as a permanent entity after this time. In the following MOPs, formalized decisions were adopted to establish terms of reference and operational procedures for the permanent Multilateral Fund, as well as for the election and functioning of the Executive Committee and the rates of assessment for various State Parties. When the Multilateral Fund became permanent in 1993, the MOP also adopted provisions relating to juridical personality standing and privileges and immunities it was to be subject. Later MOP decisions have focused on replenishment and disbursements as well as ensuring geographical equity in Executive Committee membership, periodic reviews of funding operations and the creation of additional governance mechanisms such as the Implementation Committee.

## ***b) High Seas Treaty/Biodiversity Beyond National Jurisdiction Agreement***

In 2023, the High Seas Treaty/Biodiversity Beyond National Jurisdiction Agreement (BBNJ treaty) was formally agreed to by the intergovernmental negotiating committee tasked with creating it and is now open for signature and ratification. As of the time of writing, there nearly 10 signatory States to the BBNJ and almost 10 States that have officially ratified it.

Under the terms of the BBNJ treaty itself, a hybrid financing system has been established in addition to the general obligation placed on all State Parties to “provide, within [their] capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans and programmes.”<sup>1</sup> It is clear within the treaty text that the State Parties which are capable of providing funding are intended to be the primary sources of funding for all BBNJ-related funding activities envisioned as part of the treaty. Article 52 of the BBNJ treaty creates the financing mechanism to assist in the implementation of the treaty and is specifically tasked with assisting developing State Parties through measures that include capacity building and applicable technology transfer. The financing mechanism is primarily comprised of two separate, free-standing entities – the voluntary trust fund that exists under the COP’s governance and a special fund – and another trust fund that is expressly placed under the administration of the GEF. It should be noted that, as discussed in greater detail below, the GEF Trust Fund for the BBNJ has already been operationalized and will soon begin making financial disbursements by the end of 2024. Further, the text of Article 52 leaves open the possibility of future COPs expanding financing options and generating additional forms of financing systems as deemed appropriate to carry out the treaty’s terms.

In Article 52(6), both the special fund to be directed by the COP and the GEF Trust Fund are authorized to:

- (a) Fund capacity-building projects under this Agreement, including effective projects in the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology;
- (b) Assist developing State Parties in implementing this Agreement;
- (c) Support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge;
- (d) Support public consultations at the national, subregional and regional levels;
- (e) Fund the undertaking of any other activities as decided by the Conference of the Parties.

It should be noted that each of these terms was also specifically adopted by the GEF in its guiding policies and decisions regarding accepting and operationalizing the BBNJ Trust Fund.

Recognizing the potential for overlapping funding sources based on the broad scope of BBNJ, the treaty stresses that the financial mechanism should seek to advance complementarity and coherence with other funders working in the same topics.<sup>2</sup> It also allows for the incorporation of public and private sources of funding, including governmental and non-governmental funders.<sup>3</sup>

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<sup>1</sup> High Seas Treaty article 52(1).

<sup>2</sup> Ibid. at art. 52(7).

<sup>3</sup> Ibid. at art 52(8).

Overall, the BBNJ treaty places the entirety of the financial mechanism under the authority and guidance of the COP and also requires the COP and the GEF to “agree upon arrangement to give effect to the [BBNJ terms] at the first meeting of the Conference of the Parties.”<sup>4</sup> The option of concluding a formal Memorandum of Understanding between the BBNJ COP and the GEF is being discussed, although this would not be possible until the treaty enters into force and can convene a COP for this purpose. It also requires the COP to establish “an initial resource mobilization goal through 2030 for the special fund” under its jurisdiction.<sup>5</sup> Funding from the special fund “shall be distributed according to equitable sharing criteria, taking into account the needs for assistance of Parties with special requirements.”<sup>6</sup> To facilitate oversight of all aspects of the financing mechanism, the BBNJ treaty requires the COP to establish a dedicated finance committee on financial resources and decide on its core functions, based on the understanding that these will include reporting and recommendations to the COP as a whole. Further, the COP itself is tasked with periodic reviews of the financing mechanism.

Subsequently, in June 2023 through Decision 14/2023, the GEF Council officially accepted the invitation from the Intergovernmental Conference on BBNJ to join the BBNJ treaty financial mechanism and authorized the use of \$34 million from the International Water Focal Area to be transferred and used for the purposes of “funding of ratification support and early action activities for the BBNJ Agreement to be programmed during GEF-8.” It is expected that these priorities will shift to implementation and become full-fledged measures once the BBNJ treaty receives the 60 State Party ratifications necessary for it to become operational. In order to have the ability to carry out these functions, the GEF Assembly adopted a new amendment to its Instrument that allow the GEF to administer the BBNJ trust fund and to be accountable to and under the guidance of the BBNJ COP “on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources.

To facilitate its work, the GEF has established a variety of national programme support options relating to the ratification and early implementation process for the BBNJ treaty, including gap analysis measures and capacity assessments, as well as legislative assistance and support for awareness, education and public engagement on the process. The established maximum grant amount for countries at this stage is up to \$175,000 per country. To complement this, there are programme measures available to support coordinated efforts for ratification and early implementation at the regional and international levels. The established maximum grant amount is \$5 million for these efforts overall. A process has been established to allow the GEF to assess the proposals received at this early stage and it is expected that the first meeting of the BBNJ COP, once the BBNJ treaty enters into force, will provide additional guidance for future GEF decisions.

As of August 2024, the GEF has announced initial funding for ratification activities in Vanuatu, Palau, the Marshall Islands and the Solomon Islands, collectively totalling approximately \$700,000. It is also working with UNEP, the FAO and UNDP as entities that are assisting in the planning and future direction decision-making for funding activities relating to the BBNJ treaty.

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<sup>4</sup> Ibid. at art 52(10).

<sup>5</sup> Ibid. at art 52(11).

<sup>6</sup> Ibid. at art 52(12).

### c) *Minamata Convention on Mercury*

Under the terms of the Minamata Convention on Mercury, essential aspects of State Parties' commitments regarding financial resources and financial mechanisms are found in Article 13. This article begins with commitments from State Parties to provide access to domestic resources, including financial resources, for the implementation of the Convention's terms with the caveat that this be done within national capabilities. Article 13(1) expressly includes multilateral funding as well as private sector involvement in funding as options. In Article 13(4), State Parties agree that "in their actions with regard to funding, shall take full account of the specific needs and special circumstances of Parties that are small island developing States or least developed countries."

The Minamata Convention creates a "Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention" in Article 13(5) and, subsequently, provides that the Mechanism is to include both the GEF Trust Fund and "a specific international Programme to support capacity-building and technical assistance." Indeed, as Article 13 further provides, "The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports."

The elements of the Mechanism vested in the GEF are expressly placed there to be operated using the guidance issued by the Minamata Convention COP and are to be subject to accountability to the COP as well.<sup>7</sup> Thus, the Convention text is clear that "the Global Environment Facility Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties." Given the unique nature of mercury regulation as envisioned by the Convention, the GEF Trust Fund is further guided that it "should take into account the potential mercury reductions of a proposed activity relative to its costs."<sup>8</sup>

While the text of the Minamata Convention creates the option of a separate international financing programme in Article 13(6)(b), the same article leaves open further details and parameters, leaving these to the discretion of the COP and its first meeting.<sup>9</sup> In terms of funding oversight and potential replenishment, the Convention requires the COP to review the funding levels and guidance provided to operationalize them by the 3<sup>rd</sup> meeting, and then provides the COP with broad latitude to establish future reviews "on a regular basis." (Art 13(11)).

Following from this, during Minamata COP1, State Parties adopted a set of guidance for the GEF in its funding activities undertaken as part of the Mechanism in the Convention. This included the creation of an eligibility list of projects, policy areas and States to receive funding, requiring that these States be State Parties to the Convention and that they be classified as "a developing country or a country with an economy in transition."<sup>10</sup> The first meeting of the COP also saw the adoption of financial rules to be used by the Minamata Secretariat and associated bodies for the functioning of the Convention,

<sup>7</sup> Minamata Convention on Mercury at article 13(7).

<sup>8</sup> Ibid. at art 13(8).

<sup>9</sup> Ibid. at art 13 (9).

<sup>10</sup> UNEP/MC/COP.1/Dec5. MC-1/5: Guidance to the Global Environment Facility (22 November 2017).

including for the funding and work of the General Trust Fund and the Special Trust Fund over which the Secretariat has operational control and the COP has supervisory authority.<sup>11</sup>

Most recently, at COP5 in November 2023, the COP recognized plans for the 8<sup>th</sup> and 9<sup>th</sup> replenishment of the GEF in terms of its application to the Convention-related funding operations.<sup>12</sup> It also issued formal guidance to the GEF regarding the need for Convention-related funding decisions to be made in conjunction with other relevant international obligations, notably the GBF and biodiversity broadly.<sup>13</sup>

To facilitate the relationship between the terms of Article 13 of the Minamata Convention and the GEF, a Memorandum of Understanding between the COP of the Minamata Convention and the GEF Council was adopted. Under the terms of the MOU, the COP is recognized as the source of guidance and instruction for the operational details, priorities, principles and programmes of the Trust Fund and the GEF Council expressly commits to “ensure the effective operation of GEF as a source of funding for activities for the purposes of the Convention in conformity with the guidance provided to it by the Conference of the Parties.” As part of this relationship, the Council is empowered to provide feedback to the COP and to suggest matters for which COP guidance would be necessary. The MOU explicitly states that

Funding decisions for specific projects and activities should be agreed between the developing-country Party or the Party with an economy in transition concerned and GEF in accordance with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties. The GEF Council is responsible for approving the GEF work programmes. If a Party considers that a decision of the Council regarding a specific project is not consistent with the guidance provided by the Conference of the Parties in the context of the Convention, and if after consideration the Conference of the Parties decides that the concern of the relevant Party has merit, the Conference of the Parties will seek clarification from GEF and analyse the observations presented to it by the concerned Party and the response by GEF. In the event that the Conference of the Parties considers that the project decision by the GEF Council is not consistent with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties, it may request GEF to propose and implement a course of action to address the concern regarding the project in question. (para 6).

As a corollary, the MOU establishes set reporting requirements for the Council to provide information to the Minamata Convention, including decision-making as well as monitoring and evaluation practices. To implement the Minamata Convention and the MOU, there are explicit authorizations for cooperation between the secretariats of the GEF and the Minamata Convention.

From 2014 onward, the GEF Council has adopted decisions which enable activities to support Minamata Initial Assessments, to support the development of National Action Plans for artisanal and small-scale gold mining (ASGM), to assist in State Party ratification and implementation of the Minamata Convention, and to assist in the reduction of mercury as required under the Convention.<sup>14</sup>

<sup>11</sup> UNEP/MC/COP.1/Dec 10, MC-1/10: Financial rules for the Conference of the Parties to the Minamata Convention on Mercury and any of its subsidiary bodies, as well as financial provisions governing the functioning of the secretariat (22 November 2017).

<sup>12</sup> UNEP/MC/COP.5/Dec11, MC-5/11: Review of the financial mechanism of the Minamata Convention on Mercury (24 November 2023).

<sup>13</sup> Ibid.

<sup>14</sup> See UNEP/MC/COP.1/INF/3, Activities of the Global Environment Facility (31 August 2017).

These activities were able to be conducted from the outset of the Minamata Convention's adoption because of the express authorization for the GEF to work with the Interim Secretariat for the Minamata Convention in the period between formal adoption and the first COP.<sup>15</sup>

An additional element of the GEF's involvement with financing for the Minamata Convention is the planetGOLD programme it currently administers. This programme is a collaboration between the GEF, Minamata Convention State Parties, the private sector and communities in which artisan and small-scale gold mining are conducted. One of the innovative features of planetGOLD is that it allows for the use of multiple forms of financing, often for small and medium sized projects, including aspects of debt financing, microfinance, socially responsible investment, and industrial partnership development, as well as more traditional funding from national and multilateral institutions.<sup>16</sup> This programme is in addition to the main focus of the GEF financing activities for the Minamata Convention, which have been geared in large part toward providing assistance to State Parties in conducting and implementing the results of Minamata Initial Assessments.<sup>17</sup>

Further, the adoption of hosting and other arrangements for the Special International Programme (SIP), as established in the Convention, to be implemented and hosted by UNEP yet administered by the Minamata Convention Secretariat was another critical, early decision made by the Minamata COP.<sup>18</sup> The SIP was given an initial timeframe of operations from 1 January 2018 to 1 January 2028, with the Minamata Convention COP having the ability to authorize an extension of this timeframe for up to an additional seven years.<sup>19</sup> SIP funding is available only to State Parties to the Minamata Convention and is to be used to support methods of implementing the Convention's obligations. Funding is available for qualifying projects at the regional, national and sub-national levels, with the amount of project financing available ranging from a minimum of USD50,000.00 to a maximum of USD250,000.00.<sup>20</sup> There are prohibitions in place to ensure that an otherwise qualifying project cannot receive financing from both the SIP and the GEF's Minamata Convention funding operations. Oversight of the SIP comes from the Governing Board, comprised of 10 members, representing two members from each of the five official UN regions.<sup>21</sup> Finally, it should be noted that funding to the SIP is solely contributed by State Parties to the Minamata Convention.<sup>22</sup>

#### **d) Convention on Biological Diversity/Kunming-Montreal Global Biodiversity Framework**

In 2022, at COP15, State Parties to the Convention on Biological Diversity (CBD) adopted the Kunming Montreal Global Biodiversity Framework (GBF) as a non-binding set of commitments that were the successor to the 2010 Aichi Targets. While the bulk of the GBF and its targets relate to biodiversity conservation, protection and promotion, there are also significant provisions for trade and financing aspects of biodiversity. Critically, Target 19 calls for States and the international community to "Substantially and progressively increase the level of financial resources from all sources, in an effective, timely and easily accessible manner, including domestic, international, public and private

<sup>15</sup> Ibid.

<sup>16</sup> See PlanetGOLD, <https://www.planetgold.org/>.

<sup>17</sup> See GEF, Mercury, <https://www.thegef.org/what-we-do/topics/mercury>.

<sup>18</sup> UNEP/MC/COP.2/Dec 6, MC-1/6: The Specific International Programme to Support Capacity-Building and Technical Assistance, as finalized by the Conference of the Parties at its second meeting (22 November 2017).

<sup>19</sup> Minamata Convention on Mercury, Specific International Programme, <https://minamataconvention.org/en/implementation/specific-international-programme>.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



resources, in accordance with Article 20 of the Convention, to implement national biodiversity strategies and action plans, mobilizing at least \$200 billion by 2030.” To achieve this, there is a commitment to increasing international biodiversity-related financing to developing States, least developed countries and SIDS in the amount of at least \$20 billion annually by 2025 and at least \$30 billion annually by 2030.

Following the adoption of the GBF, in CBD COP 15 Decision 15/15, it was decided that the GEF would become a core actor in implementing its financing prongs, especially those relating to Target 19. Subsequently, the Global Biodiversity Framework Fund (GBFF) was established within the GEF structure in GEF Council Decisions 09/2023 and 10/2023. The GBFF was created “to support the human rights-based and gender-responsive implementation [of the GBF], complementing existing support and scaling up financing to ensure its timely implementation.” It will work to implement the provisions of the GBF and, to date, has only been authorized to provide funding to qualifying activities until the end of 2030. While contributions from the private sector are included in the potential sources of funding for the GBFF, a number of concerns regarding the provenance of such funding have been raised and are currently under review by the GEF.

Governance of the GBFF will be carried out by a GBFF Council, to be comprised of representatives from donor and recipient States as well as invited representatives from selected other international organizations, MEA secretariats, and observers from the private sector, Indigenous Peoples and local communities, youth groups and conservation or other related organizations. It is intended to create advisory groups or other sub-entities as deemed appropriate for the provision of guidance and advice on matters relating to the scope of funding authorized under the GBF and associated decisions. As of February 2024, the GBFF adopted a Country Maximum Dollar Value of Funding Requests for the First Programming Tranche of the GBFF to guide programming and decision-making.

#### **e) *Stockholm Convention on Persistent Organic Pollutants***

In Article 13 of the Stockholm Convention on Persistent Organic Pollutants, developed State Parties commit to providing financial support for implementation of the treaty terms by developing State Parties.<sup>23</sup> To facilitate this, the Convention provides for the creation of a generic funding entity that would function under the guidance and oversight of the COP.<sup>24</sup> The Convention is clear that this entity was intended to be further amplified and defined during the first COP and refined throughout the future COP process.<sup>25</sup>

In Article 14, the Stockholm Convention goes on to specify that the GEF was intended to function as the interim financial mechanism until the point at which the COP made other arrangements for a permanent entity. Subsequently, guidance and more precise directions on the operations and functions of the financial mechanism were provided by the early COPs to the GEF in its role as an interim funding administrator.<sup>26</sup> While the early years of GEF-administered funding under the financial mechanism were related to generation of national implementation plans by qualifying State Parties, the COPs endorsed a shift in funding priorities toward the concrete entrenchment of these implementation plans by COP 3 and this has continued to be an ongoing area of focus.<sup>27</sup> Over time,

<sup>23</sup> Stockholm Convention on Persistent Organic Pollutants at article 13.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> See SC-1/9, Guidance to the Financial Mechanism.

<sup>27</sup> See SC-3/16, Additional guidance to the Financial Mechanism.

the COPs have established a trend of highlighting specific chemicals and hazardous substances that are to be addressed through the financing mechanism of the Stockholm Convention commensurate with the identified level of threat they pose to national and international communities. Despite the interim designation, the GEF has continued to serve as the financing mechanism for the Stockholm Convention.

#### **f) UNFCCC system and the Green Climate Fund**

Under the 1992 United Nations Framework Convention on Climate Change (UNFCCC), a dedicated article was included to create a Financial Mechanism for the implementation of the Convention's terms.<sup>28</sup> This article established the basis for the financial mechanism as such although it did not expressly designate an entity to assume these functions. What was made clear was that the COP would be the oversight body for the UNFCCC financial mechanism and that it would have wide-ranging guidance abilities to direct the activities of the financial mechanism. Additionally, it should be noted that the COP has established a Standing Committee on Finance which has become an oversight body used in the UNFCCC governance system with specific information gathering and reporting requirements.<sup>29</sup> The reporting requirements from the Standing Committee on Finance have made it clear that, in the climate change context, financing occurs within the designated international entities that comprise the Financial Mechanism as well as within private and institutional entities that operate on the periphery.<sup>30</sup>

From early in the relationship between the GEF and UNFCCC system, it was clear that there were challenges in the application of the guidance provided by the COPs to the GEF regarding operational priority areas and recipients.<sup>31</sup> While the GEF was intended to function as an interim financing mechanism for the UNFCCC and was not intended as the full extent of the Financial Mechanism, the COP decisions were clear that the use of more tailored and responsive financing decisions would be required.<sup>32</sup> In 1996, the COP and GEF entered into a formal Memorandum of Understanding that concretized the interim financial mechanism role assigned to the GEF as related to the terms of the UNFCCC itself.<sup>33</sup> Under the terms of the MOU, the COP retained the role of providing guidance for the GEF to use in implementing its funding decisions and practices. The MOU further authorized cooperation and coordination between the secretariats of the UNFCCC and the GEF.

The GEF has thus been a continuous constitutive element of the Financing Mechanism for the UNFCCC. In addition to general authorizations to “provide[] financing to country-driven climate change mitigation and climate change adaptation projects,”<sup>34</sup> it now administers a series of specialized funds created by the COPs, namely the Least Developed Countries Fund and the Special Climate Change Fund. In administering its roles relating to the UNFCCC, the GEF has been empowered to receive private sector funding in some instances and to facilitate the use of blended financing to meet certain project and programmatic needs.

<sup>28</sup> United Nations Framework Convention on Climate Change at article 11.

<sup>29</sup> See FCCC/CP/2018/10/Add.1, Report of the Conference of the Parties at its twenty-fourth session (19 March 2019).

<sup>30</sup> See Report of the COP for Sharm

<sup>31</sup> Decision 11/CP.2 (FCCC/CP/1996/15/Add.1) (1996)

<sup>32</sup> Ibid.; Decision 12/CP.2 (FCCC/CP/1996/15/Add.1) (1996); Decision 13/CP.2 (FCCC/CP/1996/15/Add.1) (1996)

<sup>33</sup> Decision 12/CP.2, *supra* note 32.

<sup>34</sup> FCCC/CP/2022/10/Add.2, Report of the Conference of the Parties at its twenty-seventh session (17 March 2023).

In 2010, the Green Climate Fund (GCF) was established by the UNFCCC COP<sup>35</sup> as a standalone entity to provide financing connected to implementation of the UNFCCC, especially in relation to addressing the connections between funding projects which were grounded in climate change responses and also advance sustainable development.<sup>36</sup> As expressed in the Governing Instrument for the Green Climate Fund,

The Fund will play a key role in channelling new, additional, adequate and predictable financial resources to developing countries and will catalyse climate finance, both public and private, and at the international and national levels. The Fund will pursue a country-driven approach and promote and strengthen engagement at the country level through effective involvement of relevant institutions and stakeholders. The Fund will be scalable and flexible and will be a continuously learning institution guided by processes for monitoring and evaluation. The Fund will strive to maximize the impact of its funding for adaptation and mitigation, and seek a balance between the two, while promoting environmental, social, economic and development co-benefits and taking a gender-sensitive approach.<sup>37</sup>

The GCF is explicitly designated as being under the umbrella of the Financing Mechanism established in Article 11 of the UNFCCC, including accountability to the UNFCCC COP, although it also maintains a separate internal governance structure.<sup>38</sup> This includes a reporting requirement to the COP.<sup>39</sup>

In addition, the GCF is expressly recognized as having a distinct juridical personality that includes privileges and immunities for the organization and its officials when carrying out their formal duties.<sup>40</sup> As a distinct organization, the GCF is governed by a Board of the Fund, which is composed of members elected from developing and developed States on the basis of UN geographical regions, along with representatives from SIDS and LDCs.<sup>41</sup> A dedicated GCF Secretariat was also created, making it independent from the UNFCCC Secretariat system.<sup>42</sup> The GCF is directly administered through the work of a Trustee, an office with accountability to the GCF Board. For operational purposes, it should be noted that the World Bank was designated as the interim Trustee in 2010 and that this arrangement was subsequently converted into an agreement that the World Bank will serve as the permanent GCF Trustee.<sup>43</sup> Initially, to facilitate the shift in UNFCCC programme funding to the GCF and from some other fund administrators, the COP established a Transitional Committee comprised of representatives from State Parties with the mandate of institutional design and implementation for the GCF.<sup>44</sup> The work of the Transitional Committee was conducted against the backdrop of the Terms of Reference for the Design of the GCF adopted at COP16, which set out a broad set of required actions to be undertaken.<sup>45</sup>

<sup>35</sup> UNFCCC Decision 1/CP.16, FCCC/CP/2010/7/Add.1 (15 March 2011) pt IV (A) paras 100, 102.

<sup>36</sup> Governing Instrument for the Green Climate Fund (2010).

<sup>37</sup> *Ibid.* at pt I (3).

<sup>38</sup> *Ibid.* at pt II.

<sup>39</sup> See Arrangements between the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Green Climate Fund (2010).

<sup>40</sup> Governing Instrument, *supra* note 36, at pt II(B).

<sup>41</sup> *Ibid.* at pt II (C).

<sup>42</sup> *Ibid.* at pt II (E).

<sup>43</sup> FCCC/CP/2010/7/Add.1, Report of the Conference of the Parties on its sixteenth session (15 March 2011).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* at Appendix III.

In terms of funding sources, the GCF is expressly authorized to receive and disburse financial contributions from developed States as well as from public and private sources generally.<sup>46</sup> To ensure the efficient and effective use of funds, the GCF's Governing Instrument is clear that "the Fund shall operate in the context of appropriate arrangements between itself and other existing funds under the Convention, and between itself and other funds, entities, and channels of climate change financing outside the Fund."<sup>47</sup> Given the operational independence of the GCF and its status as a separate international organization, it was empowered to and has adopted a number of policies on funding practices to ensure transparency, accountability and inclusion for many constituencies.

Under Article 9 of the 2015 Paris Agreement, there is an express commitment that "developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention."<sup>48</sup> In undertaking these commitments, the Paris Agreement expressly provides that developed country State Parties should attempt to mobilize multiple forms of financial mechanisms "from a variety of sources, instruments and channels."<sup>49</sup> Since the Financial Mechanism already existed within the UNFCCC context, the Paris Agreement reiterated the role of the Financial Mechanism in serving as the means of implementing for the terms of the Paris Agreement rather than creating additional entities.<sup>50</sup>

To streamline climate finance under the Financial Mechanism, there has been an increased focus on ensuring coherence between the various constituent elements of the Mechanism, resulting in official policies such as the Long-Term Vision on Complementarity, Coherence and Collaboration between the GCF and the GEF. Since the adoption of the Paris Agreement, the work of the Financial Mechanism has been expanded to meet a variety of new and emerging areas of priority as established by subsequent COPs, including for topics such as loss and damage.<sup>51</sup> Subsequently, in 2023 the COP officially operationalized a new Loss and Damage Fund, after much work by a dedicated Transitional Committee on the topic, and specified that this new form of funding will be administered through an independent secretariat that will operate under the auspices of the Financing Mechanism.<sup>52</sup> The arrangements for this new Fund are similar to the initial arrangements for the GCF, including the use of the World Bank as an interim Trustee that would provide capacities, privileges and immunities and similar support to the Fund for the next four years. In the Governing Instrument, the Fund is expressly "able to receive contributions from a wide variety of sources of funding, including grants and concessional loans from public, private and innovative sources, as appropriate" and the Board of the Fund is required to "prepare a long-term fundraising and resource mobilization strategy and plan for the Fund to guide its mobilization of new, additional, predictable and adequate financial resources from all sources of funding."<sup>53</sup> It also has a designated replenishment cycle of every four years and is empowered to engage in an extensive range of financing instruments beyond loans and grants.<sup>54</sup>

<sup>46</sup> Governing Instrument, *supra* note 36, at pt IV.

<sup>47</sup> *Ibid.* at pt V (A).

<sup>48</sup> Paris Agreement on Climate Change at article 9(1).

<sup>49</sup> *Ibid.* at art 9(2).

<sup>50</sup> *Ibid.* at arts 9(8), (9).

<sup>51</sup> See Twelfth Report of the Green Climate Fund to the Conference of the Parties of the United Nations Framework Convention on Climate Change.

<sup>52</sup> FCCC/CP/2023/11/Add.1, Report of the Conference of the Parties on its twenty-eighth session (15 March 2024).

<sup>53</sup> Governing Instrument, *supra* note 36, at pt VII.

<sup>54</sup> *Ibid.* at art VIII.

#### IV. Conclusions and Recommendations for Consideration

Overall, the lessons from the Multilateral Fund for the ILBI drafting process if considering a standalone financing mechanism include:

- The need to anticipate and establish a financing mechanism for the implementation of the ILBI from the beginning as part of the treaty text rather than waiting until the Conference of the Parties system to start working on this. Given the intensity of issues stemming from plastic pollution in terms of the environment, biodiversity, economy and socio-economic stresses as at international and national levels, efficient and effective financing will be critical from the outset.
- The necessity of the financing mechanism to provide time-sensitive funding for States seeking assistance in the ratifying the ILBI and in developing implementation plans once ratification has occurred.
- As a corollary, the need for the ILBI to vest the COP and the financial mechanism system with flexibility to adapt to current and future funding needs regarding plastic pollution issues. This would include the ability to create new entities as part of the financing mechanism and to expand the forms and functions of financing under the ILBI.
- The need to carefully articulate the criteria that would be used to determine the classification of State Parties as developing or otherwise qualifying recipient States and developed or otherwise qualifying donor States since the measurements of involvement in the plastics lifecycle and connections to plastics production, consumption and waste management will be different than under the Montreal Protocol or other existing MEAs.
- The need for establishing liaisons and explicit legal and functional relationships with other multilateral financial institutions, UN agencies and, potentially, other international and regional institutions to assist in implementing funding programmes.
- The adoption of general criteria or intended categories for funding is essential and must be clear and transparent while also allowing for tailoring to reflect evolving future funding issues in plastic pollution. Such flexibility would be vital in many instances, including methods of addressing legacy plastics, the development of plastic alternatives and substitutes, and the implementation of national plans and national reporting requirements under the ILBI.
- The potential utility of an interim financial entity that could be used to facilitate early funding for Treaty implementation and how this might then become incorporated into the permanent structure of the financing mechanism.
- The need for the future financing mechanism to adopt and mainstream policies and practices that would protect the communities and constituencies impacted by project funding.
- The necessity of designing a financing mechanism which can accept public and private funding sources, as deemed appropriate by the State Parties, as well as a broad set of potential financing options. The latter should include blended finance options and other innovative financing practices.