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**CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY**

Third meeting

Buenos Aires, Argentina

4 to 15 November 1996

Item 6.5 of the provisional agenda

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE PARTIES TO
THE CONVENTION ON BIOLOGICAL DIVERSITY AND THE COUNCIL OF THE GLOBAL
ENVIRONMENT FACILITY REGARDING THE INSTITUTIONAL STRUCTURE OPERATING
THE FINANCIAL MECHANISM OF THE CONVENTION****Background**

The first meeting of the of the Conference of the Parties authorised the Secretariat on behalf of the Conference of the Parties, taking into account the views of participants in the first meeting of the Conference of the Parties, to consult with the restructured Global Environment Facility (GEF) on the content of a Memorandum of Understanding between the GEF and the Conference of the Parties

The Secretariat received comments from: Australia; Canada; Denmark; France; Germany; the Group of 77 and China, Japan, Norway, Sweden, Switzerland; the United Kingdom; the United States of America; Greenpeace International; and the World Wide Fund for Nature.

On the basis of these comments the Secretariat developed a draft “Memorandum Of Understanding Between The Conference Of The Parties To The Convention On Biological Diversity and The Council Of The Global Environment Facility Regarding The Institutional Structure Operating The Financial Mechanism Of The Convention” and submitted it to the second meeting of the Conference of the Parties. At this meeting the Conference of the Parties took note of the draft Memorandum of Understanding and in Decision II/6 requested the Secretariat to continue consultations on the draft in order to ensure that additional comments by Parties were reflected, and to submit a revised draft for the Conference of the Parties to consider at its third meeting.

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In response to the Conference of the Parties' request to continue consultations on the draft Memorandum of Understanding, the Secretariat requested written submissions from Parties on 8 January 1996. The Secretariat received 18 submissions from: Argentina; Australia; Chad; Colombia; Czech Republic; France; Germany; Greece; Hungary; India; Indonesia; Niger; Norway; Pakistan; Spain; Uganda; United Kingdom; and United States of America.

The Secretariat received further input from Parties at a retreat held in Frankfurt between 2 and 4 July 1996 and at an informal meeting on the Memorandum of Understanding held for developing country parties in Montreal between 31 August and 1 September 1996. Both meetings were chaired by Ambassador Razali Ismail, then permanent representative of Malaysia to the United Nations and now President of the General Assembly. Further comments were also received after the informal meeting in Montreal from several developing country Parties who were unable to attend this meeting.

These comments formed the basis of a revised draft Memorandum of Understanding which was then presented to the GEF Secretariat. This revised draft Memorandum of Understanding was negotiated by the Secretariat of the Convention and the GEF over the course of September, and the final version was submitted to the GEF at the 8th Meeting of the Council of the Global Environment Facility held 8 to 10 October 1996. The Council took note of the revised draft Memorandum of Understanding but felt that it was unable to adopt the Memorandum due to the fact that the members were not able to adequately consult with their constituencies. The text of the revised draft Memorandum Of Understanding Between The Conference Of The Parties To The Convention On Biological Diversity And The Council Of The Global Environment Facility Regarding The Institutional Structure Operating The Financial Mechanism Of The Convention is contained in the Annex to this Note.

The Conference of the Parties should note that paragraph 11 of the revised draft Memorandum of Understanding provides that the revised draft Memorandum of Understanding will come into effect upon approval by the Conference of the Parties and the GEF Council. The Conference of the Parties may wish to approve the Memorandum of Understanding and forward it to the GEF Council for its approval.

Annex

Preamble

The Conference of the Parties to the Convention on Biological Diversity (hereinafter the Conference of the Parties) and the Council of the Global Environment Facility (hereinafter the Council),

Recognising the characteristics of the financial mechanism for the provision of financial resources for the purposes of the Convention on Biological Diversity (hereinafter the Convention) outlined in article 21, paragraph 1, of the Convention, and the provisions of article 21, paragraph 2, of the Convention, which call upon the COP to decide on the arrangements to give effect to article 21, paragraph 1, after consultation with the institutional structure entrusted with the operation of the financial mechanism,

Recognising further the willingness of the Global Environment Facility (hereinafter the GEF) to serve for the purposes of the financial mechanism for the implementation of the Convention,

Recognising that the GEF, as decided by the Conference of the Parties, will operate the financial mechanism of the Convention

Having consulted with each other and taking into account the relevant aspects of their governance structures as reflected in their constituent instruments,

The Conference of the Parties and the Council have reached the following understanding.

1. Purpose

The purpose of the present Memorandum of Understanding is to make provision for the relationship between the Conference of the Parties and the Council in order to give effect to the provisions of article 21, paragraph 1, of the Convention and paragraph 26 of the GEF Instrument.

2. The Institutional Structure

The GEF will operate the financial mechanism referred to in Article 21 of the Convention until 1999, at which time the Conference of the Parties will review the effectiveness of the mechanism and take appropriate action as provided for in paragraph 3 of Article 21.

3. Guidance from the COP

3.1 In accordance with Article 21(1) of the Convention, the Conference of the Parties will determine the policy, strategy, programme priorities and eligibility criteria for access to and utilisation of financial resources available through the financial mechanism including monitoring and evaluation on a regular basis of such utilisation. The GEF, in operating the financial mechanism under the Convention, will only finance activities that are in full conformity with the guidance provided to it by the Conference of the Parties. For this purpose, the Conference of the Parties will communicate its guidance, and any revisions to such guidance as it may adopt, on the

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following matters:

- (a) Policy and strategy;
- (b) Programme priorities;
- (c) Eligibility criteria;
- (d) An indicative list of incremental costs;
- (e) A list of developed country Parties and other Parties which voluntarily assume the obligations of developed country Parties;
- (f) Any other matter relating to Article 21, including periodic determination of the amount of resources needed.

3.2 The Council agrees to communicate to the Conference of the Parties all relevant information, including information on the projects in the area of biological diversity funded by the GEF outside of the framework of the financial mechanism of the Convention.

4. Reporting

- 4.1 The Council will prepare and submit a report for each ordinary meeting of the Conference of the Parties.
- 4.2 The reports will include specific information on how the GEF Council, its Secretariat and its Implementing and Executing Agencies have applied the guidance and implemented the Policy, strategies, programme priorities and eligibility criteria determined by the Conference of the Parties, as well as any other decision of the Conference of the Parties communicated to the GEF, in the operation of the GEF for the purposes of the Convention. The Council should also report on its monitoring and evaluation activities concerning projects in the biodiversity focal areas.
- 4.3. In particular, the reports will provide detailed information on the GEF's biodiversity focal area, including:
 - (a) Information on how the GEF has responded to the guidance of the Conference of the Parties, including, where appropriate, through its incorporation in the GEF operational strategy and operational programs.
 - (b) The conformity of the approved work programmes with guidance of the Conference of the Parties;
 - (c) A synthesis of the different projects under implementation and a listing of the projects approved by the Council in the biodiversity focal area as well as a financial report with an indication of the financial resources required for those projects;
 - (d) A list of project proposals submitted for approval to the Council, through the GEF Implementing Agencies, by eligible Parties, including reporting on their approval status and in cases of projects not approved the reasons thereof;

(e) A review of the project activities approved by the GEF and their outcomes, including information on funding and progress in implementation.

(f) GEF efforts to leverage additional financial resources for the implementation of the Convention.

4.4 In order to meet the requirements of accountability to the Conference of the Parties, reports submitted by the Council will cover all GEF-financed activities carried out for the purpose of the Convention, whether decisions on such activities are made by the Council or by the GEF's Implementing and/or Executing Agencies. To this end, the Council will make arrangements as might be necessary with the Implementing Agencies regarding disclosure of information.

4.5 The Council will also provide information on other matters concerning the discharge of its functions under article 21, paragraph 1, as may be requested by the Conference of the Parties. If the Council has difficulties in responding to any such request, it will explain its concerns to the Conference of the Parties and the Conference of the Parties and the Council will find a mutually agreed solution.

5. Monitoring and evaluation

5.1 The Conference of the Parties may raise with the Council any matter arising from the reports received.

5.2 The funding decisions for specific projects should be agreed between the developing country Party concerned and the GEF in accordance with policy, strategy, programme priorities and eligibility criteria established by the Conference of the Parties. The GEF Council is responsible for approving the GEF work programmes. If any Party considers that a decision of the Council regarding a specific project in a proposed work programme does not comply with the policies, programme priorities and eligibility criteria established by the Conference of the Parties in the context of the Convention, the Conference of the Parties should analyse the observations presented to it by the Party and take decisions on the basis of compliance with such policy, strategy, programme priorities and eligibility criteria. In the event that the Conference of the Parties considers that this specific project decision does not comply with the policy, strategy, programme priorities and eligibility criteria established by the Conference of the Parties, it may ask the GEF Council for further clarification on the specific project decision and in due time may ask for a reconsideration of that decision.

5.3 As provided for in article 21, paragraph 3, of the Convention, the Conference of the Parties will periodically review the effectiveness of the financial mechanism in implementing the Convention and communicate to the Council relevant decisions taken by the Conference of the Parties as the result of such review to improve the effectiveness of the financial mechanism in assisting developing country Parties to implement the Convention.

6. Joint Determination of the Available GEF Funding

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- 6.1 In anticipation of the replenishment of the GEF, the COP will make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the COP, in fulfilling their commitments under the Convention over the next GEF replenishment cycle, taking into account:
- (a) Article 20, paragraph 2, and Article 21, paragraph 1, of the Convention;
 - (b) Guidance to the financial mechanism from the COP which call for future financial resources;
 - (c) The information communicated to the COP in the national reports submitted in accordance with Article 26 of the Convention; and
 - (d) National strategies, plans or programs developed in accordance with article 6 of the Convention;
 - (e) Information communicated to the COP from the GEF on the number of eligible programmes and projects that were submitted to the GEF, the number that were approved for funding, and the number that were turned down owing to lack of resources.
- 6.2 On the occasion of each replenishment, the GEF will, in its regular report to the COP as provided for in paragraph 4 of this MOU, indicate how it has responded during the replenishment cycle to the COP's previous assessment prepared in accordance with paragraph 6.1, inform the COP of the conclusion of replenishment negotiations and indicate the amount of new and additional funding to be contributed to the GEF Trust Fund in the next replenishment cycle for the purposes of the GEF, including the implementation of the Convention.
- 6.3 The COP will review the amount of funding necessary and available for the implementation of the Convention on the occasion of each replenishment of the financial mechanism.

7. Reciprocal representation

On a reciprocal basis, representatives of the GEF will be invited to attend meetings of the Conference of the Parties and representatives of the Convention will be invited to attend meetings of the GEF.

8. Inter-secretariat Co-operation

The Secretariat of the Convention and the Secretariat of the GEF will communicate and co-operate with each other and consult on a regular basis to facilitate the effectiveness of the financial mechanism in assisting developing country Parties to implement the Convention. In particular, the two Secretariats will consult on the project proposals under consideration for inclusion in a proposed work program, especially

with regard to the consistency of the project proposals with the guidance of the COP. Official documentation of the GEF will be made available to the CBD Secretariat.

9. Amendments

Any amendments to the present Memorandum of Understanding will be mutually agreed upon by the Conference of the Parties and the Council.

10. Interpretation

If differences arise in the interpretation of the present Memorandum of Understanding, the Conference of the Parties and the Council will reach a mutually agreed solution.

11. Entry into effect

The present Memorandum of Understanding will come into effect upon approval by the Conference of the Parties and by the Council. Either participant may withdraw this Memorandum of Understanding at any time by notification addressed to the other. The withdrawal will take effect six months after its notification.
