

GLOBAL  
ENVIRONMENT  
FACILITY

ARRANGEMENT WITH THE CONVENTIONS  
ON BIOLOGICAL DIVERSITY AND  
THE FRAMEWORK CONVENTION  
ON CLIMATE CHANGE

GEF Council Meeting  
Washington, D.C.  
July 18 - 20, 1995

GEF/C.5/8  
June 21, 1995

#### RECOMMENDED DRAFT COUNCIL DECISION

The Council reviewed document GEF/C.5/8, *Arrangements with the Conventions*, including the *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 the *Draft Memorandum of Understanding between the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Council of the Global Environment Facility*. The Council noted with appreciation the significant progress that had been made by the secretariats of the conventions and the Secretariat of the GEF in preparing the draft memorandums. The Council made the following comments on the texts:

[Insert comments made by the Council]

The Council requested the Secretariat to transmit its comments on the draft Memorandum of Understanding for purposes of the Convention on Biological Diversity to the convention's secretariat with a request that the convention secretariat submit the Council's comments, together with the draft memorandum of understanding, for consideration by the second meeting of the Conference of the Parties to the Convention.

The Council further requested the Secretariat to transmit its comments on the draft Memorandum of Understanding for purposes of the Framework Convention on Climate Change to the convention's secretariat with a request that the convention secretariat submit the Council's comments, together with the draft memorandum of understanding, for consideration by the convention's Subsidiary Body on Implementation which has been entrusted by the Conference of the Parties with a review of the arrangements with the financial mechanism.

1. Paragraph 27 of the Instrument for the Establishment of the Restructured Global Environment Facility provides that "the Council shall consider and approve cooperative arrangements or agreements with the Conferences of the Parties to the conventions referred to in paragraph 6...".

2. At its meeting in May 1995, the Council reviewed document GEF/C.4/8 which provided information on progress that had been made within the context of the Convention on Biological Diversity and the Framework Convention on Climate Change towards developing arrangements with their financial mechanisms. The Council also took note of the request of each convention that its secretariat consult with the GEF on the content of such arrangements, and requested the GEF Secretariat to carry out appropriate consultations on its behalf with each convention secretariat with a view to transmitting to the Parties to the Convention and the GEF Council a jointly prepared draft text for their consideration.

3. The Council also requested the Secretariat to submit to its July meeting a report on its consultations, including the most current elements of the draft agreements.

4. As requested, the GEF Secretariat has consulted with each convention secretariat. The consultations have been very productive, and as a result, two draft memorandums have been prepared.

5. The text of 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 is presented in Annex A. The Council is invited to review the draft memorandum and to comment upon the text. The Council should note that the two secretariats were not able to reach consensus on the drafting of paragraphs 4.3(c) and 4.5, and that alternatives for the paragraphs concerned appear in brackets. The Secretariat would welcome the guidance of the Council on the drafting of these paragraphs in particular.

6. The text of a draft Memorandum of Understanding between the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Council of the Global Environment Facility is presented in Annex B. The Council is invited to review the draft memorandum and to comment upon the text.

7. The Council should note that the form adopted for each text is that of a memorandum of understanding. A memorandum of understanding is a form of arrangement that is often used to denote a firm, but not legally binding, commitment between two or more organizations. Each memorandum provides that the arrangements described therein will become effective upon approval by the Convention's Conference of the Parties and the GEF Council. In accordance with Annex B, paragraph 7, of the Instrument, should it be decided for either convention that the arrangement between the two organizations should be articulated in a legally binding agreement, the Council would need to request the Trustee to formalize any such agreement considered and approved by the Council.

## 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

1. *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).

Recognizing 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.

Recognizing 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 as provided in paragraph 6 of the Instrument for the Establishment of the Restructured Global Environment Facility (hereinafter the Instrument),

Recognizing that the GEF, as decided by the COP, is to operate the financial mechanism of the Convention, *[NOTE: This paragraph is subject to a possible decision of the COP II in November 1995]*

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.

2. *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 Instrument.

### **3. *Communication***

**3.1** The Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria for access to and utilization of financial resources available through the financial mechanism including monitoring and evaluation on a regular basis of such utilization. The decisions of the Conference of the Parties on these issues shall guide the GEF in the operation of the financial mechanism under the Convention. For this purpose, the Conference of the Parties shall communicate its decisions, and any revisions to them as it may adopt, on the 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, paragraph 1 of the Convention, 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. The Conference of the Parties will review each such report at its earliest opportunity.
- 4.2** The report will include specific information to indicate how the policy, strategy, 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, have been applied in the operations of the GEF for the purposes of the Convention.

4.3. In particular, the report will provide information on the following:

(a) The GEF's operational strategy and strategic programmes in the area of biological diversity;

(b) A synthesis of the different projects under implementation;

[(c) A list of project proposals submitted by eligible Parties for funding, including reporting on their approval status; (*proposal made by CBD secretariat*)]

[(c) 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; (*proposal made by GEF secretariat*)]

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

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 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 COP and the COP and the Council will find a mutually agreed solution. (*proposal made by CBD secretariat*)]

[The Conference of the Parties may request the Council to provide information on other matters concerning the discharge of its functions under article 21, paragraph 1. If the Council has any difficulty in responding to any such request, it will explain its difficulty to the COP, and the COP and the Council will find a mutually agreed solution. (*proposal made by GEF secretariat*)]

## 5. *Monitoring and evaluation*

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

5.2 The funding decisions for specific projects should be agreed between the developing country Party concerned and the GEF in conformity with policy guidance from the COP. The GEF Council is responsible for approving the GEF

work programs. If any Party considers that a decision of the Council regarding specific project in a proposed work program does not comply with the policies, programme priorities and eligibility criteria established by the COP in the context of the Convention, the COP should analyze the observations presented to it by the Party and take decisions on the basis of compliance with such policies, programme priorities and eligibility criteria. In the event that the COP considers that this specific project decision does not comply with the policies, programme priorities and eligibility criteria established by the COP, 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 shall periodically review the effectiveness of the financial mechanism in implementing the Convention and communicate to the Council relevant actions taken by the COP 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 aggregate GEF funding requirements*

The Conference of the Parties and the Council will jointly determine the aggregate GEF funding requirements for the purpose of the Convention.

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 shall be invited to attend meetings of the GEF.

8. *Intersecretariat Cooperation*

The Secretariat of the Convention and the Secretariat of the GEF will communicate and cooperate 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.

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.