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**Budget and programme of work for the biennium 2012–2013
and the Environment Fund and other budgetary matters**

**Evolution of the relationship between the United Nations
Environment Programme and the multilateral environmental
agreements that it administers****Note by the Executive Director***Summary*

The annex to the present note explains the distribution and evolution of managerial and administrative authority in respect of multilateral environmental agreements administered by the United Nations Environment Programme (UNEP). It describes recent findings of the Board of Auditors and the Office of Legal Affairs pertaining to the expanded authority and autonomy of multilateral environmental agreements and their implications for UNEP. It also makes recommendations aimed at clarifying and strengthening accountability that have the potential to alter the relationship between UNEP and the agreements that it administers. The report has been prepared in the light of consultations with the Committee of Permanent Representatives, the Office of Legal Affairs, the Department of Management and the United Nations Office at Nairobi. The annex is presented without formal editing.

* UNEP/GC.26/1.

Annex

Evolution of the relationship between the United Nations Environment Programme and the multilateral environmental agreements that it administers

Institutional overview

1. The principal responsibility for the environment within the United Nations system is vested with the United Nations Environment Programme (UNEP). The mandate for UNEP derives from General Assembly resolution 2997 (XXVII), by which the Assembly established the Governing Council of UNEP, the Environment secretariat and the Environment Fund. The Governing Council, in its decision 19/1, clarified the role and mandate of UNEP in the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme, which the Assembly subsequently endorsed in the annex to its resolution S/19-2. The Assembly elaborated further on the role of UNEP in its resolution 53/242.
2. The Governing Council, in its decision SS.VII/1 on international environmental governance, reiterated the need for a strengthened UNEP with a stronger science base and, among other things, called for increased capacity-building and technology support by UNEP to developing countries and countries with economies in transition, improved coordination among Multilateral Environmental Agreements (MEAs) and enhanced United Nations system-wide coordination and cooperation. The Assembly, most recently in its resolution 64/204, reaffirmed the role of UNEP as the principal body within the United Nations system in the field of the environment.
3. On 1 January 1996, the United Nations Office at Nairobi (UNON) was established from the United Nations Common Services Unit at Nairobi and the separate divisions of administration of UNEP and the United Nations Human Settlements Programme (UN-Habitat). The objective in establishing UNON was to strengthen the United Nations presence in Nairobi and to achieve economies of scale. Under a memorandum of understanding and specific service agreements with UNEP and UN-Habitat, UNON provides a full range of central administrative and other support services.¹ Under various agreements with offices of other organizations of the United Nations system located in Nairobi, UNON also administers common support services for those offices. Moreover, it manages the United Nations facilities in Nairobi. The responsibilities of UNON are set out in the Secretary-General's bulletin ST/SGB/2009/3 on the organization of the United Nations Office at Nairobi.
4. The substantive programme activities of both UNEP and UN-Habitat are funded predominantly from voluntary contributions (deemed "extrabudgetary" in relation to the assessed "regular budget" of the UN). On the basis of data on administrative workloads in support of their operations, UNEP and UN-Habitat reimburse UNON for the services provided through a system of reimbursement arrangements. A significant component of funding for the Administration, Nairobi, is consequentially of an extrabudgetary origin. This situation was addressed by the General Assembly initially in its resolution 52/220, in which the Assembly requested the Secretary-General to bring the financial arrangements of the Office into line with those of similar United Nations administrative offices. In response to that request and with a view to easing the administrative

¹ These services include but are not limited to: recruitment, classification and repatriation; payroll and the administration of staff entitlements including education grants, medical insurance (including Appendix d), home leave and repatriation; the UN's financial disclosure programme (and associated payments to UN headquarters); accounting and finance functions, including statement preparation, payables/receivables, cash-flow management, treasury and contributions receipt and recording; end-of-service and post-retirement benefits including the administration of pension fund deductions and ASHI; non-expendable property; the administration of internal audit, investigation, inspection and external audit; the UN's administration of justice system; shipping, pouch, visas and UN LPs; mail and other ICT systems and services.

costs levied on the substantive programmes of UNEP and UN-Habitat, the Secretary-General has made a commitment to gradually increase the regular budget component of the programme budget of the Office. That commitment was reflected in the proposed programme budgets for the bienniums 2000-2001, 2002-2003, 2004-2005, 2006-2007 and 2008-2009 under the section for Administration, Nairobi, and was subsequently endorsed by the Assembly in its resolutions 54/249, 56/253, 57/292, section I, 58/270, 60/247 A and 62/236, whereby the Assembly approved the proposed increases in the level of resources for the administration of the Office.²

5. In accordance with arrangements that predate the establishment of UNON, UNEP is charged with providing treasury and other secretariat services to the Multilateral Fund of the Montreal Protocol and with providing administrative services to the following MEAs:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (SBC)
- Convention on Biological Diversity (CBD)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Convention on the Conservation of Migratory Species of Wild Animals (CMS) and its co-located Agreements, including the Agreement on the conservation of African-Eurasian Migratory Waterbirds (AEWA), the Agreement on the Conservation of Populations of European Bats (EUROBATS) and the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS)
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- Stockholm Convention on Persistent Organic Pollutants
- Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances That Deplete the Ozone Layer
- The Regional Seas Programmes including the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the “Cartagena Convention”), the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the “Barcelona Convention”), the Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific (the “Antigua Convention”), and the Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (the “Abidjan Convention”).

6. While the Executive Director has taken steps to augment UNEP’s administrative accountability and capacity, including through the creation of an Office of Operations, the lions-share of central administrative services provided to the above-mentioned MEAs are provided by UNON (under the memorandum of understanding and specific service agreements with, and discounted services available to, UNEP referred to in paragraphs 3 and 4 above).³ This point notwithstanding, all UNEP trust funds, including those pertaining to MEAs, have been established in accordance with Article V of the General Procedures Governing the Operations of the Fund of UNEP and as such are governed by the Financial Rules of UNEP and incorporated in its accounts and financial statements. The Financial Rules of UNEP, as they apply to the Environment Fund

² Section 28G of the programme budget of the UN for the biennium 2010-2011 (A/64/6)

³ UNEP/GC.25/127 October 2008. In relation to Geneva-based MEAs, it must be noted that some administrative services are also provided by the United Nations Office at Geneva (UNOG).

and associated trust funds, were promulgated by the Secretary General on 8 October 1998. UNEP Financial Rule 201.4 states that all matters not covered by the Financial Rules of UNEP are governed by the Financial Regulations and Rules of the UN (ST/SGB/2003/7).

The current situation

7. The management and administrative relationship between UNEP and the above-mentioned MEAs has acquired a considerable level of difficulty. These difficulties are described in a number of reports. The UN's Joint Inspection Unit (JIU), for example, in its report on environmental governance within the United Nations System, was critical of the fact that most UNEP/United Nations-administered MEAs have separate secretariats and "a variety of new financial mechanisms" and pointed to difficulties facing UNEP's provision of efficient and effective programme support services.⁴ This report cited a number of examples in this regard, including delays in administrative actions, the absence of easily accessible budgetary information, the lack of integrated administrative and programme support for MEAs by UNEP and UNON and the inequitable distribution and use of the 13% programme support costs (PSC) among MEAs. In this report, the JIU recommended that the Secretary-General, based on the proposal of UNEP and in consultation with MEA secretariats, review and define a clear delegation of authority. The JIU also recommended a clear division of roles and responsibilities between the entities concerned with the provision of administrative, financial and human resources management services and increased transparency in the use of the PSC resources.

8. The above-mentioned JIU report is but one of a number of studies that have addressed this and related issues, including:

- The 19 January 1999 report of the Executive Director on the cost of administering trust funds and counterpart contributions.⁵
- The 11 August 2003 report by the Office of Internal Oversight Services (OIOS) on UNEP's provision of administrative services to the UNEP-administered conventions.⁶
- The 20 July 2007 report of a "Task Team" established by the Executive Director to review and issue recommendations aimed at improving the administration of UNEP-administered convention secretariats.⁷

9. The first of the reports cited in paragraph 8 above was presented to the Governing Council and in its decision 20/35 of 4 February 1999, the Council requested the Executive Director to:

- Implement appropriate actions directed towards reducing the cost of programme support services provided to trust funds and related activities with a view to containing such cost within the PSC charges levied.
- Review the direct allocations provided to trust fund financed units, programmes and projects, as opposed to allocations provided to central administrative services, with a view to ensuring that trust-fund-financed units, programmes or projects do not incur a disproportionate burden on the PSC charges levied.

⁴ JIU/REP/2008/3

⁵ UNEP/GC.20/26 of 19 January 1999

⁶ OIOS reference 03-0193

⁷ Report of the Task Team on Administrative Arrangements for the UNEP-administered convention secretariats

- Ensure that the PSC charges levied are not allocated towards activities of a programmatic nature, thereby decreasing the allocation available for the provision of management and administrative services.

10. The second of the reports cited in paragraph 8 above found:

- A lack of clarity regarding the respective administrative roles and responsibilities between UNEP Convention Secretariat staff and UNEP Headquarters staff.
- That MEA staff “have expanded administrative responsibilities without any formal documented mandate or authority from the UNEP Executive Director”.
- That there needs to be greater accountability for ensuring efficient and effective delivery of services to conventions.
- That there should be increased transparency in the mechanism used for funding the provision of administrative services.
- That improvement to the oversight mechanism is required to provide regular feedback to the COPs and Executive Director of UNEP on efficiency and effectiveness of the services provided.
- That the disparate size of convention secretariats and the varying extent to which they provide services for themselves has led to dissatisfaction among conventions who believe that the PSC does not offer them value for money, and that their contributions may be used to subsidize cost incurred by smaller conventions who contribute less but use more of the services provided by UNEP/UNON.

11. The third of the reports cited in paragraph 8 above found:

- A lack of clarity in administrative and procedural roles and responsibilities concerning the relationship between the Executive Director and the executive heads, within UNEP itself and between UNEP, the multilateral environmental agreements and the service providers.
- Contention between UNEP, the MEAs and the MEAs governing bodies on the degree of transparency regarding the way in which PSC funds are allocated between the multilateral environmental agreements and whether they are sufficient or more or less than sufficient.
- That there have been numerous exchanges between the Executive Director, the executive heads and service providers on the use of PSC, which at present are dealt with on a case-by-case basis in the absence of a clear apportionment mechanism.

Recent developments

(i) The Executive Director

12. In response to the issues highlighted above, the Executive Director asked a former Controller of the United Nations to review the recovery, allocation and use of PSC by UNEP. This review recommended that:

- An amount equivalent to one third of MEA-related PSC earnings be allocated to ensure the provision of high-quality central services, oversight and guidance to MEAs by UNEP, UNON and the UN’s oversight bodies.

- UNEP take steps to ensure a healthy fund balance and operating reserve on its PSC account (the adequacy of which is the subject of a long-outstanding OIOS recommendation).
- As the operating reserve on the PSC account is replenished, approximately two thirds of the PSC income generated by MEAs should be used by UNEP to finance programme support functions within the immediate secretariats of the MEAs (upon submission and assessment of annual costed workplans that demonstrate that these funds will be used efficiently and effectively in support of their activities).⁸

13. The above-mentioned report described the ‘outsourcing’ of UNEP’s administrative services in Nairobi to UNON – or at least the primary services such as payroll, payments, contracts management – as a complicating factor for MEAs supposedly administered by UNEP. Further complications become apparent when one considers that UNEP retains responsibility for its administrative units away from headquarters (units that operate in part under delegations of authority issued by UNON).

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14. In 2009, the Executive Director shared the above-mentioned report with MEAs and explained that UNEP is taking steps towards ensuring that PSC charges can be shown to have been collected in a manner that is justifiable, consistent and equitable and that the allocation of PSC resources is transparent and demonstrably appropriate. Moving towards an equitable allocation of PSC resources will take time as a number of MEAs presently receive more PSC than that to which they are potentially entitled, and these resources are tied to contractual arrangements. In order to provide as much as two thirds of the PSC income generated by MEAs to finance programme support functions within the immediate secretariats of these MEAs, those MEAs that receive more of the PSC to which they are entitled must increase their PSC earnings or else reduce their costs. The current allocation of PSC resources is shown in Annex 1.

⁸ This formula is based on the UN policy governing the reimbursement of programme support costs - as defined in administrative instruction ST/AI/286 – which requires that this revenue be allocated equitably between project management, programme management and central administrative functions.

15. In respect of the above, it must be further noted that:

- UNEP invests additional resources through its programme of work and budget to support the work of MEAs, including staff and management time in Regional Offices and the Office of the Executive Director for which no cost reimbursement is provided.
- Programmes/offices of the UN Secretariat, of which UNEP and UNON are parts, do not presently have the cost-accounting systems required to provide support costs estimates by activity and by MEA (and the cost of developing these systems may very well outweigh the benefits). In the absence of a cost-accounting system UNEP aims to apply the UN PSC apportionment formula described above.
- UNEP and UNON must be in a position to demonstrate that their core budgets are not subsidizing the work of MEAs and other activities deemed to be ‘extrabudgetary’ as per General Assembly resolution 50/214 of 29 February 1996.

16. In 2009, the Executive Director also initiated a process of updating the administrative and accountability arrangements governing UNEP’s relationship with the MEAs. This process has started with CITES and CMS and takes the form of a strategic level agreement between the Executive Director and the Conference of Parties (or a duly-designated subsidiary body) and a comprehensive delegation of authority from the Executive Director to the executive heads of MEAs in which their responsibility and accountability, particularly for the management of human, financial and physical resources, is carefully and clearly defined. The delegations of authority are based on the following:

- The UN’s accountability framework, including the UN’s performance appraisal system and the UN Secretary-General’s performance compact with the Executive Director (and the Executive Director’s obligation to pass on managerial and administrative performance standards on to his MEA managers – none of whom should be exempted from UN performance criteria).
- The principle that delegations of authority, like accountability, are personal (because people, and not positions, can be held accountable).
- The requirement under UN regulations and rules for critical separations of functions (including between those performed within the MEAs and by UNEP/UNON).
- The fact that the Executive Director is ultimately responsible/accountable for the provision of management and administrative services to MEAs and must be given the necessary authority in this regard (the Executive Director cannot be held accountable for something over which he or she has no authority).

17. While UNEP is taking steps to effect the changes to the allocation and use of PSC, the implementation of the administrative and accountability reforms described above has been complicated by a recent finding of the United Nations Board of Auditors and a recent ruling by the Office of Legal Affairs.

(ii) The Board of Auditors

18. In accordance with UNEP Financial Rules 213.1, 213.3 and 214.1, the Executive Director maintains such accounts and records as are necessary to enable him or her to report to the Governing Council and General Assembly, and has prepared and certified as correct, the annual accounts of the Environment Fund and associated trust funds. The Executive Director submits accounts to the United Nations Board of Auditors not later than 31 March following the end of the financial period and these accounts, with the corresponding report of the Board of Auditors, is then transmitted to the Advisory Committee on Administrative and Budgetary Questions, the Governing Council and General Assembly.

19. In the Financial report and audited financial statements for the biennium ended 31 December 2009, the Board of Auditors stated the following:⁹

57. The consolidation of multilateral environmental agreement funds in the financial statements of UNEP raises the question of the level of UNEP control over the management of those funds, inasmuch as those funds are subject to decisions of the conferences of the Parties, not of the Governing Council of UNEP. In particular, UNEP did not have authority to use the total reserves and balances of the multilateral environmental agreement funds.

58. The Board considers the above as indicating that the extent of control by UNEP over the multilateral environmental agreement funds may not be sufficient to justify the inclusion of said funds in the financial statements of UNEP.

59. The Board recommends that UNEP re-examine the extent of its control over the multilateral environmental agreement funds with a view to assessing the appropriateness of their inclusion in its financial statements.

(iii) Control and legal status

20. At the time when UNEP acquired responsibility for "providing" or "carrying out" the functions of the secretariat of the MEAs listed in paragraph 5 above, the authority of the Executive Director of UNEP in matters pertaining to the management and administration of MEA resources was unequivocal in that these resources were governed exclusively by the UN and UNEP regulations, rules and related administrative instructions. In the Financial Rules of UNEP, the Secretary General has assigned clear authority and accountability for the Environment Fund and associated trust funds to the Executive Director of UNEP. This authority has been further delegated by the Executive Director, including to staff assigned to the work of MEAs. To date, the human, financial and physical resources of MEAs have been administered and managed as distinct but integral parts of UNEP. The authority of the Executive Director for the management and administration of MEA resources must not be confused with the authority of conferences of parties to take programme and/or substantive resource allocation and policy decisions. The authority of the conferences of parties in this respect is enduring and uncontested.

21. Subsequent decisions by various conferences of parties to UNEP-administered MEAs have qualified the authority of the Executive Director, enhanced the authority and autonomy of the 'executive' head of the immediate MEA secretariat, renamed and/or established a distinct legal identity for the immediate MEA secretariat and even established requirements that redefine and/or directly contradict the policies and procedures set forth in UN and UNEP regulations, rules and related administrative instructions. Examples in this regard can be found in Annex 2. Such decisions are not the sole preserve of conferences of parties. In its resolution 64/203 of 21 December 2009 on the Convention on Biological Diversity, the General Assembly took note of the ongoing work of the Joint Liaison Group of the secretariats and offices of the relevant subsidiary bodies of the United Nations Framework Convention on Climate Change (UNFCCC), the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or

⁹ A/65/5/ADD.6(SUPP)

Desertification, Particularly in Africa (UNCCD), and the Convention on Biological Diversity (CBD), and further encouraged continuing cooperation in order to promote complementarities among the secretariats while respecting their independent legal status [emphasis added].

22. In response to questions raised in respect of the Convention on Biological Diversity, on 13 October 2010 the Office of Legal Affairs ruled that:

- In view of the fact that the “Permanent Secretariat of the CBD” was established pursuant to the CBD and through the decisions of the CBD/COP, and as the CBD/COP is a treaty body and not a subsidiary organ of the United Nations and/or the General Assembly, the primary intergovernmental organ in this respect is the CBD/COP.
- With respect to matters on which the CBD/COP has not pronounced itself, the Executive Director of UNEP and the CBD Executive Secretary should also be guided by the relevant issuances of the Secretary-General (including ST/SGB/2006/13); the relevant decisions of the UNEP Governing Council (including UNEP/GC.18/36); and any relevant resolutions of the General Assembly.
- The provision of administrative services by UNEP to the CBD is an administrative arrangement which should not be dealt with through a delegation of authority but a contractual agreement between the entities involved (to be signed by the Executive Director of UNEP and the CBD Executive Secretary and presented to the CBD/COP).

23. The opinion above is directly relevant to the Board of Auditors findings in respect of control. The Permanent Secretariat of the CBD is first and foremost governed by the decisions of the COP and not the policies, procedures and chain of command of the UN/UNEP. It is a separate entity such that its relationship with UNEP must be the subject of a contractual relationship.

24. If the above-quoted findings and recommendation of the Board of Auditors are relevant now, this relevance will be significantly enhanced as the UN implements International Public Sector Accounting Standards (IPSAS).¹⁰ In this context, consolidated financial statements are the financial statements of an economic entity presented as those of a single entity. In order for the accounts of the MEAs to appear in UNEP’s financial statements, the Executive Director must have the power to govern the financial and operating policies of these entities such that UNEP can benefit from their activities (i.e. in respect of the use of reserves and fund balances) and the users of these statements (i.e. the General Assembly and Governing Council) are concerned about, and need to be informed about, the financial affairs of the economic entity as a whole.¹¹

25. In accordance with IPSAS, the power to control must be presently exercisable, that is the entity must already have had this power conferred upon it by legislation or some formal agreement. The power to control is not presently exercisable if it requires changing legislation or renegotiating agreements in order to be effective. The existence of the power to control another entity is not dependent upon the probability or likelihood of that power being exercised. Similarly, the existence of control does not require an entity to have responsibility for the management of (or involvement in) the day-to-day operations of the other entity.

The way forward

26. The Executive Director and the executive heads of the immediate secretariats of MEAs will need to undertake an urgent case-by-case review of decisions taken by conferences of parties, in collaboration, as appropriate, with duly-designated subsidiary bodies of these conferences of parties. If the human, financial and

¹⁰ The Board of Auditors also questioned the inclusion of the Trust Fund for the Multilateral Fund for the Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer in the financial statements of UNEP. They recommended that this trust fund be legally classified as an integral part of UNEP or else be presented separately.

¹¹ http://www.ipsas.org/PDF_ipsas_standards_ifac/2006_A10_IPSAS_6.pdf

physical resources of MEAs are to continue to be managed and administered as distinct but integral parts of UNEP; if the associated trust funds are to remain in the accounts and financial statements of UNEP; and, if the relevant staff and other personnel are to remain as staff and personnel of UNEP, then those conferences of parties to MEAs that have taken decisions that have qualified the management and administrative authority of the Executive Director, enhanced the authority and autonomy of the executive head of the relevant MEA, renamed and/or established a distinct legal identity for the immediate MEA secretariat and established requirements that conflict with the policies and procedures set forth in UN and UNEP regulations, rules and related administrative instructions will need to amend these decisions. The primary managerial and administrative authority of the Executive Director and of UN and UNEP regulations, rules and related administrative instructions will need to be clearly recognized and reinforced by decisions of these conferences of parties, or else UNEP will need to establish a clear legal and administrative distinction between itself and the human, financial and physical resources of MEAs. This exercise need not impinge upon the authority of conferences of parties to take programme and/or substantive resource allocation and policy decisions but it will need to render the executive heads of the immediate MEA secretariats accountable to the Executive Director, as well as the relevant conference of parties and duly-designated subsidiary bodies, for their management performance, including in respect of their implementation of decisions taken by conferences of parties.

27. In the event that individual conferences of parties elect not to recognize and reinforce the primary managerial and administrative authority of the Executive Director and of UN and UNEP regulations, rules and related administrative instructions, the immediate secretariats of the relevant MEAs will need to plan to directly undertake significantly more administrative tasks and/or to enter into direct administrative relationships with UNON and/or other service providers. Conferences of parties will also need to approve MEA budgets that enable a managerial and administrative separation from UNEP. Following initial consultations with the Department of Management and UNON, and a preliminary review of the management and administrative arrangements pertaining to UNFCCC and UNCCD, the establishment of a clear legal and administrative distinction between UNEP and the human, financial and physical resources of MEAs will need to ascertain whether these MEAs are to retain a UN-affiliation beyond UNEP.¹² By extension these MEAs will then need to decide whether to apply and/or utilize:

- UN regulations, rules and related administrative instructions pertaining to human resources including recruitment and classification services, gender and geographical distribution objectives, salaries and entitlements (pre- and post-retirement), training and performance appraisal systems.
- UN administration of justice, disputes resolution, ethics and ombudsman services, policies and practices (including financial disclosure, hotline and whistle-blower protection).
- UN financial, treasury, investment and accounting services, regulations, rules and related administrative instructions (including those pertaining to the financial period and currency of account).
- UN services, regulations, rules and related administrative instructions pertaining to the security and safety of staff and the acquisition and disposition of goods and services (including those pertaining to pro bono contributions and gratis personnel).
- The UN's oversight bodies (including the Office of Internal Oversight Services and the Board of Auditors).
- Business continuity services and the new UN ERP system and reforms such as the implementation of International Public Sector Accounting Standards (IPSAS).

¹² It will also be necessary to determine if such an affiliation is possible, including in consultation with appropriate services at UN headquarters.

28. In the event that conferences of parties elect to maintain or extend the current managerial and administrative distinctions between UNEP and the MEAs but retain a UN affiliation and apply UN regulations, rules and related administrative instructions, they will need to decide whether to source the services described in paragraphs 3 and 27 internally or externally. Given the relatively small scale of the operations, staffing and funding of UNEP-administered MEAs, this will likely entail a significant increase in support costs. The current level of funding allocated to central administrative services is shown in Annex 1. If MEAs determine, for example, that they lack the requisite capacity and economies of scale to maintain their own accounts, payroll, entitlements processing, treasury and other central services, and decide to obtain these from UNON, they must take account of the fact that UNON will need to consider adopting a cost-recovery regime that differentiates between services provided to UNEP's Environment Fund and the MEAs.¹³ To date, UNON has issued a single aggregated bill for services provided to UNEP. This has allowed MEAs to benefit from the services, capacity and associated financing described in paragraphs 3 and 4 above. In 2010-2011, excluding those parts of UNON's Division of Administrative Services that primarily service Nairobi-based operations, approximately \$15 million will be spent servicing UNEP of which \$10.9 million is provided by the UN's regular budget. These funds are not provided to service MEAs and other entities deemed external to UNEP's management and administrative architecture.

29. If UNON is asked to prepare separate financial statements for MEAs, and under either of the scenarios described above it may eventually be required by IPSAS to do so, it will require additional accounting resources. In this event, the separate accounts and statements of MEAs will be subject to additional levels of audit by the Board of Auditors (due to lower levels of materiality). As an example, external audit costs alone pertaining to UNEP's Division of Global Environment Facility Coordination (DGEF) were US \$51,000 for 2008; as compared to a bill of US \$104,000 for the whole of UNEP, including MEAs. It must be noted in this regard that DGEF's statements are extracts of, and thus not truly separate from, those of UNEP. Separate actuarial valuations for after-service entitlements would also be required. In this regard, in 2009 both UNEP and UN-Habitat were charged US \$19,000 by UN headquarters (indicating that charges may be similar irrespective of the size of the reporting organization). The Offices of Internal Oversight Services and Administration of Justice have also confirmed that their coverage of UNEP does not extend to MEAs and other entities deemed external to UNEP. In both instances, proportionally significant and direct service payments may be required. The legal and administrative separation of UNEP and UNEP-administered MEAs will also entail additional human resources management costs, including in respect of UNON's recruitment and appointment review processes and if MEA staff contracts are to be converted and/or replaced from those of UNEP to those limited to service with a specific MEA.

30. The UNFCCC budget for the biennium 2010-2011, shows that with a total budget of €133 million (and a core budget of €45 million), it is possible for stand-alone MEAs to cover human, financial and physical resources management costs from the 13% charge levied on their trust funds.¹⁴ It must be noted, however, that while UNFCCC operations may benefit from economies of scale, they also receive significant support for conference services from the UN regular budget and finance ICT architecture and systems from the core budget of the convention and not from the 13% charge.¹⁵ The UNFCCC budget for the biennium 2010-2011 shows that all of the 13% is allocated to administrative and common services (including audit and United Nations Office at Geneva (UNOG) costs). In 2009, UNOG charged US \$604,000 to UNFCCC for payroll, treasury, insurance and passport services. UNFCCC prepares its own financial statement based on financial data maintained in the IMIS database at UNOG and contracts for a separate actuarial report and pays directly for services provided by OIOS and Board of Auditors.¹⁶ In 2008-2009 UNFCCC paid US \$406,137 to OIOS

¹³ Economies of scale are not the only advantage to be obtained in this regard. Internal controls are provided by the systems, staff and the segregation of duties inherent to UN administrative services.

¹⁴ FCCC/SBI/2009/2/Add.1

¹⁵ FCCC/SBI/2009/2 and FCCC/SBI/2009/2/Add.1

¹⁶ The Report of the Board of Auditors and audited financial statements for the biennium ended 31 December 2009 are provided in document FCCC/SBI/2010/14.

and US \$197,017 to the Board of Auditors.¹⁷ The appointments of UNFCCC staff are limited to service with UNFCCC.

31. The UNCCD budget for the biennium 2010-2011 points to a potentially more costly, and complex, picture. From a total budget of €26.1 million, and a core budget of €13.9 million (which includes PSC of €1.6 million) the administrative and finance services consists of 1 P-5, 1 P-4, 1 P-3, 3 P-2, 9 GS and a budgetary cost of €5.2 million (of which €5 million is borne by the core budget).¹⁸ The outputs of this service include: programme budget and performance reports; financial statements; financial management reports; processed payments; IPSAS implementation and ICT services. The appointments of UNCCD staff are also limited to service with UNCCD.

¹⁷ It must be noted that part of these costs pertained to services provided during the preceding biennium.

¹⁸ ICCD/COP(9)/5/Add.1

Annex 1

The allocation of Programme Support Costs (PSC) resources between UNEP/UNON and MEA secretariats

(in thousands of US dollars)

MEA	2008-2009						Estimate 2010					
	Trust Fund Expenditure	PSC Income	PSC Expenditure in MEA	% of total PSC	PSC retained by UNEP/UNON	% of total PSC	Trust Fund Expenditure	PSC Income	PSC Expenditure in MEA	% of total PSC	PSC retained by UNEP/UNON	% of total PSC
SBC	9,007	1,162	834	72%	328	28%	6,829	947	473	50%	474	50%
CBD	35,118	4,388	2,727	62%	1,661	38%	23,759	2,480	2,014	81%	466	19%
CITES	14,199	1,495	1,072	72%	423	28%	8,156	874	477	55%	397	45%
CMS	13,253	1,655	1,157	70%	498	30%	6,727	564	671	119%	-107	-19%
Rotterdam/Stockholm	21,278	2,765	1,250	45%	1,515	55%	12,986	931	672	72%	259	28%
Vienna Convention	11,027	1,307	430	33%	936	72%	5,732	732	215	29%	517	71%
Regional Seas Programmes	29,988	3,546	1,893	53%	1,653	47%	15,590	1,823	781	43%	1,042	57%
Total	133,870	16,318	9,363	57%	7,014	43%	79,779	8,351	5,303	64%	3,048	36%

Annex 2

Examples of decisions by conferences of parties to MEAs that have qualified the authority of the Executive Director, enhanced the authority and autonomy of the ‘executive’ head of the immediate MEA secretariat, renamed and/or established a distinct legal identity for the immediate MEA secretariat and even established requirements that redefine and/or directly contradict the policies and procedures set forth in UN and UNEP regulations, rules and related administrative instructions.

1. In decision III/23 the Conference of the Parties to the CBD invited the Executive Director of UNEP and the Executive Secretary of the CBD to develop procedures clarifying their respective roles and responsibilities and decided that the procedures must provide for the managerial autonomy and efficiency of the Permanent Secretariat [emphasis added] and its responsiveness to the needs of the Convention, and must ensure the administrative accountability of the Executive Secretary to the Conference of the Parties.

2. In decisions VI/29 and VIII/10 the Conference of the Parties to the CBD determined that there is a need for a transparent and objective process for appointment of the Executive Secretary that involves the Conference of the Parties and its Bureau and invited the Secretary-General of the United Nations to appoint the Executive Secretary at the level of Assistant Secretary-General, for a three-year term of office, starting on 1 July 2002.¹⁹ The CBD applies a budget period starting in the second year of the UN’s budget and financial period (i.e. 2011-2012) and approved a working capital reserve at a level of 5 per cent of the core programme budget expenditure; no operational reserve is maintained under the budgets and trust funds of the Convention and its Protocols.²⁰

3. The Secretary-General of CITES is appointed by the Secretary-General of the United Nations and is responsible and accountable for the management of the CITES Secretariat, a secretariat “administered by UNEP”.²¹ Resolution 15.1 of the Conference of the Parties to CITES, specifies the level of an operating cash reserve on the CITES Trust Fund and decides that the Secretary-General shall have the authority to make staffing decisions as necessary to implement the priorities of the parties. In relation to voluntary contributions to the CITES Trust Fund, all PSC must be returned to the CITES Secretariat.²²

4. In decision IG 17/5 the 15th Meeting of the Contracting Parties to the Barcelona Convention assigned financial management responsibility directly to the Barcelona Convention / MAP Secretariat (including for the management and monitoring of all contributions to, and disbursements from, the Mediterranean Trust Fund). In decision IG 17/18 the 15th Meeting of the Contracting Parties to the Barcelona Convention requested that the Programme of Work and Budget for the 2008-2009 biennium be implemented in accordance with the governance arrangements approved in decision IG 17/5 above.

5. In resolution 9.14, the Conference of the Parties to the CMS agreed that all contributions to the Trust Fund shall be paid in Euro, confirmed the level of a working capital fund and the willingness of the CMS Secretariat to host another international agreement (ASCOBANS). This resolution also requested the Executive Secretary to seek for tender for Information Technology Services and invited the Executive Director of UNEP to consider allocating PSC for “the implementation of activities”. More significantly, this resolution confirmed a Terms of reference for the administration of the CMS trust fund in which:

¹⁹ COP VI decision VI/29 and COPVIII decision VIII/10

²⁰ <http://www.cbd.int/cop/cop-10/doc/advance-final-unedited-texts/advance-unedited-version-admin-budget-en.doc>

²¹ <http://www.cites.org/eng/disc/org.shtml>

²² CITES SC45 Doc. 7.3

- The financial period is defined as 3 calendar years beginning 1 January 2009 and ending 31 December 2011.
- The Executive Director is to “allocate to the CMS Trust Fund the programme support cost portion of funds received as voluntary contributions with a view to providing additional support for CMS Secretariat projects” – “based on the proposals of the Executive Secretary of CMS”.
- The decision to extend the Trust Fund shall be decided by the Secretary-General of the United Nations.
- The budget, contributions and annual accounts are to be presented in Euro and the audited accounts for the financial period are also to be presented in Euro.

6. Similar arrangements are in place for the UNEP/CMS Secretariat-administered Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, Agreement on the Conservation of Populations of European Bats although in this latter instance the financial period is 4 years from 1 January 2011.²³

7. In decision XXII/21 the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer requested the Executive Director to “explore any means to retain the current Executive Secretary” beyond his mandatory UN retirement date, including if necessary by upgrading this position to that of an Assistant Secretary-General authorizing “the use of budget line transfers of funds without increasing the size of the budget if such transfers are necessary to facilitate the extension”.

²³

http://www.eurobats.org/documents/pdf/MoP6/record_MoP6/MoP6.Record.Annex4-Res6.1-Budget.pdf

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Global Ministerial Environment Forum

Nairobi, 21–24 February 2011

Item 6 of the provisional agenda *

**Budget and programme of work for the biennium 2012–2013
and the Environment Fund and other budgetary matters**

Evolution of the relationship between the United Nations Environment Programme and the multilateral environmental agreements that it administers

Note by the Executive Director

Corrigendum

1. Page 1

For the existing text *substitute*

Summary

The annex to the present note explains the distribution and evolution of managerial and administrative authority in respect of multilateral environmental agreements administered by the United Nations Environment Programme (UNEP). It excludes the Multilateral Fund for the Implementation of the Montreal Protocol, an entity with which UNEP has a distinctly different relationship. It describes recent findings of the Board of Auditors and the Office of Legal Affairs pertaining to the expanded authority and autonomy of multilateral environmental agreements and their implications for UNEP. It also makes recommendations aimed at clarifying and strengthening accountability that have the potential to alter the relationship between UNEP and the agreements that it administers. The report is intended to initiate a wider discussion, including with the Governing Council and the conferences of the parties to these multilateral environmental agreements. It has been prepared in the light of consultations with the Committee of Permanent Representatives, the Office of Legal Affairs, the Department of Management and the United Nations Office at Nairobi. It is presented without formal editing.

* UNEP/GC.26/1.

2. Paragraph 5, eighth bullet point

For the existing text, *substitute*

The regional seas conventions and action plans, including the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the “Cartagena Convention”), the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the “Barcelona Convention”), Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (the "Nairobi Convention"), Northwest Pacific Action Plan (NOWPAP), Coordinating Body on the Seas of East Asia (COBSEA), and the Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (the “Abidjan Convention”).

3. Page 9, footnote 10

Delete the footnote

4. Annex 1

Replace annex 1 with the annex below

Annex 1

The allocation of Programme Support Costs (PSC) Resources between UNEP / UNON and MEA Secretariats

(in thousands of US dollars)

MEA	2008-2009						Estimate 2010					
	Trust Fund Expenditure	PSC Income	PSC Expenditure in MEA	% of Total PSC	PSC Retained by UNEP / UNON	% of Total PSC	Trust Fund Expenditure	PSC Income	PSC Expenditure in MEA	% of Total PSC	PSC Retained by UNEP / UNON	% of Total PSC
SBC	9,007	1,162	834	72%	328	28%	6,622	789	436	55%	353	45%
CBD	35,118	4,388	2,727	62%	1,661	38%	26,186	2,965	1,814	61%	1,151	39%
CITES	14,199	1,495	1,072	72%	423	28%	8,366	800	455	57%	345	43%
CMS	13,253	1,655	1,157	70%	498	30%	7,084	906	657	73%	249	27%
Rotterdam/Stockholm	21,278	2,765	1,250	45%	1,515	55%	13,093	1,630	526	32%	1,104	68%
Vienna Convention	11,027	1,307	430	33%	877	67%	5,341	666	218	33%	448	67%
Regional seas conventions*	29,988	3,546	1,893	53%	1,653	47%	12,449	1,452	1,985	137%	(533)	-37%
Total	133,870	16,318	9,363	58%	6,955	42%	79,141	9,208	6,091	66%	3,117	34%

Preliminary figures for December 2010 as at 2 February 2011

* In 2010 the trust fund balance of one of the regional seas conventions was adjusted by US\$ 1.013 million from PSC to offset prior year's over-expenditures.

Note: this annex shows income for 2010 as at 2 February 2011 and reflects an increase in 4th quarter performance that will be taken into account in the allocations for 2011.

5. Annex 2, page 14, introductory paragraph

For the existing text, *substitute*

Examples of decisions by conferences of parties to MEAs that have qualified the authority of the Executive Director, enhanced the authority and autonomy of the 'executive' head of the immediate MEA secretariat, renamed and/or established a distinct legal identity for the immediate MEA secretariat and/or even established requirements that redefine and/or directly contradict the policies and procedures set forth in UN and UNEP regulations, rules and related administrative instructions.

6. Annex 2, paragraph 7

For the existing text, *substitute*

7. In decision XXII/21 the Parties to the Montreal Protocol on Substances That Deplete the Ozone layer stated that:

In the light of the unparalleled effectiveness of the Montreal Protocol, the parties express their strong desire to ensure continued leadership and consistency in the Ozone Secretariat during the period leading up to 2015, which is a critical period for the implementation of the most recent adjustment to that treaty. There is a pressing need to retain the current Executive Secretary of the Ozone Secretariat through 2015 to provide this leadership and consistency during this critical period.

The Parties therefore request the President of the Bureau of the Twenty-First Meeting of the Parties to work with the Executive Director of the United Nations Environment Programme to explore any means to retain the current Executive Secretary through 2015 and to convey to the Secretary-General of the United Nations the parties' request to find means to extend the tenure of the current Executive Secretary of the Ozone Secretariat through 2015.

The Parties authorize the use of budget line transfers of funds with increasing the size of the budget if such transfers are necessary to facilitate the extension. Regardless of any changes in the post of Executive Secretary that may be used to achieve the extension through 2015, the position will revert to that of a non-extended D-2 position at the end of 2015 or, if the incumbent leaves earlier, at that earlier date.
