Technical and financial assistance and compliance: the interplay

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I. Introduction

The conclusion of multilateral environmental agreements (MEAs) is one of the greatest achievements of the past few decades in the field of international environmental law. Yet, what remains to be fully ascertained is the degree of compliance with them, in particular when such agreements are likely not only to affect the environmental but also the economic policies of the States Parties. In recent years, at the regional as well as at the global level, there have been several attempts to identify the reasons for non-compliance with international environmental obligations.¹

In the debate on which means are best suited for inducing compliance with environmental treaty obligations,² one can distinguish two categories of

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² This contribution will focus on compliance with treaty obligations.

Ulrich Beyerlin, Peter-Tobias Stoll, Rüdiger Wolfrum (Eds.), Ensuring Compliance with Multilateral Environmental Agreements: Academic Analysis and Views from Practice, © 2006 Koninklijke Brill NV. Printed in The Netherlands, pp. 273-300
instruments, the so-called “hard” instruments category and the “soft” instruments category. While the “hard” instruments are mostly unilateral in nature and coercive in their finality,3 the “soft” instruments are incentive in nature and consent-based. They may consist in capacity-building, technology transfers or the provision of financial assistance measures, the latter including loans, credits and grants. “Soft” instruments are also often self-­implementing, which means that no specific enforcement action is required. “Soft” instruments are most often used to induce compliance from specific categories of countries that cannot afford to put in place all the measures needed to secure the proper implementation of an international convention. The provision of some form of financial and technical assistance to developing countries4 to secure their compliance has in fact become a common feature of many international treaties, especially in the field of environment.5

International organizations have become major channels for providing financial and technical assistance to developing countries. Several international organizations, such as the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and the World Meteorological Organization (WMO), have the provision of technical assistance as one of their main activities. Another example is the International Atomic Energy Agency (IAEA) which provides technical assistance for the peaceful use of nuclear energy. International financial institutions such as the World Bank (WB) are major providers of financial and technical assistance through their lending activities.6

Financial and technical assistance for promoting compliance with treaty obligations has several facets: it can be provided in specific circumstances

3 For example, Art. 60 of the Vienna Convention on the Law of Treaties opens the possibility for an injured State Party to terminate or suspend a treaty which has been breached via another State Party having violated its legal obligations vis-à-vis the first State party or even in respect of all States Parties. On whether this option can be considered adequate to enforce environmental treaty obligations, see: R. Wolfrum, Means of Ensuring Compliance with and Enforcement of International Environmental Law, Recueil des cours, vol.272 (1998), pp. 56-57.

4 For the purposes of this contribution, the term “developing countries”, also includes least developed countries and countries with economies in transition.

5 In other areas of international law such as human rights, the provision of technical and financial assistance also has a long-standing tradition. See: P. Sand, “Institution-Building to Assist Compliance with International Environmental Law: Perspectives”, ZAÖRV, vol.56 (1996), pp. 780-781.

such as sea incidents\textsuperscript{7} or nuclear emergencies,\textsuperscript{8} through specific funds, as for example the World Heritage Convention\textsuperscript{9} or the Ramsar Small Grants Fund.\textsuperscript{10} It may explicitly be made part of the legal obligations of developed countries, there being an expression of the principle of common but differentiated responsibilities,\textsuperscript{11} or it may be an expression of the obligation to cooperate. The Montreal Protocol, the Convention on Biological Diversity and the Convention on Climate Change have shaped this commitment as a “compliance requirement”: it is explicitly recognized that the extent to which developing country Parties will effectively implement their treaty obligations depends on the effective implementation by developed Parties of their commitments to provide financial resources and technology.\textsuperscript{12}

Promotion of compliance with environmental treaty obligations presents itself as a multi-step process whereby financial and technical assistance plays a role at each step. States are asked to develop national policies and

\textsuperscript{7} For instance, under the 1990 IMO Convention on Oil Pollution Preparedness, Response and Co-operation, in case of pollution incidents at sea, States “undertake, individually or jointly, to take all appropriate measures” in accordance with their capabilities and the availability of relevant resources. The assistance provided by Parties should have as objectives: “to train personnel; to ensure the availability of relevant technology, equipment and facilities; to facilitate other measures and arrangements; and to prepare for and respond to oil pollution incidents; and to initiate joint research and development programmes.” IMO Convention on Oil Pollution Preparedness, Response and Co-operation, 30 ILM (1990), 733, Arts. 1 (1), 7 (1).

\textsuperscript{8} Convention on Assistance in Cases of Nuclear Accident or Radiological Emergency, 22 ILM (1986) 1377, Art.2.6.

\textsuperscript{9} Convention concerning the Protection of the World Cultural and Natural Heritage, 11 ILM (1972), 1358, Art.15.

\textsuperscript{10} See Resolution 4.3, Conference of Parties to the Ramsar Convention, 1990 and Resolution VI.6, Conference of Parties to the Ramsar Convention, 1996.

\textsuperscript{11} Principle 7 of the Rio Declaration reads as follows: “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

legislation in accordance with treaty obligations. They also have to submit reports or communications containing data and information to monitoring bodies. Yet, developing countries may lack the technical and financial capabilities to achieve these objectives. In order to develop national legislation and to report on measures taken to implement treaty commitments, technical advice and financial assistance may be of crucial importance.

The process for ensuring compliance with international obligations also includes the development of strategies and procedures targeted at dealing with issues of non-compliance with treaty obligations. Ensuring appropriate

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13 For instance under the Biodiversity Convention, States Parties are requested to take national measures in order to comply with its aims. Art. 11 requires that “Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity”. The text of the Convention does not provide guidance concerning what these incentives might or should be. Several decisions of the Conference of the Parties do attempt to clarify the meaning of the term “incentives”. Biodiversity Convention, Conference of the Parties, Decision V/15, UNEP/CBD/COP/5/23; Decision VI/15, UNEP/CBD/COP/6/20; Decision VII/18, UNEP/CBD/COP/7/21. According to Decision VI/15, the purpose of incentive measures “is to change institutional and individual behaviour” in order to achieve the objectives of the Convention on Biological Diversity. The Conference of Parties also encouraged parties to review “their existing legislation and economic policies of biological diversity into policies, programmes, national accounting systems and investment strategy”. Biodiversity Convention, Conference of the Parties Decision VI/15, UNEP/CBD/COP/6/20.


ate responses to non-compliance is part of what has been termed “active treaty management”. The objective of such procedures and mechanisms is to facilitate, promote and enforce compliance with the commitments under environmental treaties. Contrary to traditional dispute settlement mechanisms, these non-compliance strategies and procedures have a “positive” nature in the sense that they are primarily aimed at ensuring the continuing participation of all States for achieving the common goals as defined in the environmental agreements. Non-compliance procedures primarily place emphasis on prevention and restoration and may provide technical and financial assistance to this end.

The distinction between ex ante assistance aimed at inducing compliance with environmental treaties and ex post assistance should be noted. Ex post assistance finds its application in the event of non-compliance. Moreover, the specific non-compliance procedures outlined above that have been developed in the environmental area do not exclude the role played by traditional dispute settlement mechanisms. In this context, it is interesting to note the interplay between traditional dispute settlement mechanisms and technical and financial assistance. Financial and technical assistance may be provided to developing countries in order to encourage these States to take recourse to an international dispute settlement body or to provide them with support in the course of dispute settlement proceedings or for the execution of a judicial decision.

II. Technical and Financial Assistance as Means for Inducing Compliance

There are several ways in which the provision of technical and financial assistance plays a role as an ex ante means for inducing compliance. Treaties dealing with oil pollution provide one such example. They require States to cooperate, in accordance with their capabilities, in assisting countries dealing with emergencies at sea. At the global and regional level, several conven-

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tions commit parties to respond to requests for assistance from States likely to be affected by pollution incidents and emergencies at sea.17

International or regional organizations play an important role in coordinating and facilitating cooperation. Such is the case with technical assistance to States faced with major oil pollution incidents at sea. For instance, under the 1990 Convention on Oil Pollution Preparedness, Response and Co-operation, parties have designated the International Maritime Organization (IMO) “to facilitate the provision of technical assistance and advice, upon the request of States faced with major oil pollution incidents.”18 The IMO’s role under this Convention is comparable to that played by the IAEA under the 1987 Convention on Assistance in Cases of Nuclear Accident or Radiological Emergency.19

Other treaties may provide for other forms of assistance. For example, in the area of the management of hazardous wastes, the establishment of regional or sub-regional centres for training and technology transfers aims at providing the adequate technical capabilities for ensuring compliance with environmental treaties.20

I. Specific Funds: the World Heritage Fund and the Ramsar Small Grants Fund

Several treaties have also established specific funding mechanisms to help to achieve their purposes. For instance, under the World Heritage Convention

18 IMO Convention on Oil Pollution Preparedness, Response and Co-operation, Art. 12.
States parties may request assistance from the World Heritage Fund for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. The provision of assistance may take several forms. It may consist of:
1. studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined under the terms of the Convention;
2. provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
3. training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
4. supply of equipment which the State concerned does not possess or is not in a position to acquire;
5. low-interest or interest-free loans which might be repayable on a long-term basis;
6. the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Another specific funding mechanism is the Ramsar Small Grants Fund, which supports wetland conservation activities. States Parties to the Ramsar Convention on Wetlands as well as countries seeking to accede to this convention may ask for a grant to support activities necessary for the identification, delineation, and mapping of a site to be included on the List of Wetlands of International Importance.

Contributions under these funding mechanisms are mixed; some are voluntary, while others are obligatory, making it difficult to determine the legal nature of the technical and financial assistance. In international practice, and in particular within a treaty framework, the legal nature of the assistance often evolves: as States grow to rely on voluntary contributions, those contributions may take on the character of legal obligations. States relying on the

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21 See Convention concerning the Protection of World Cultural and Natural Heritage, 12 ILM (1973) 1085, Art. 15.
22 World Heritage Convention, Art. 22.
contributions develop a legal entitlement to them and contributing States must then provide assistance due to the obligation of cooperation.25

2. Provision of Financial and Technical Assistance as a Legal Obligation

Agreements such as the World Heritage Convention and the Ramsar Convention provide for financial and technical assistance for improving States’ compliance. Yet they differ from the Montreal Protocol, the Convention on Biodiversity and the Convention on Climate Change. In the context of the latter, developed countries have an obligation to provide financial and technical assistance to developing countries. In application of the principle of common but differentiated responsibilities, compliance assistance through technical and financial assistance is foreseen as a legal obligation of developed countries in the context of these conventions and more generally for protecting the global environment.26 The philosophy underlying these provisions on financial and technical assistance is the so-called “common concern approach”.27 Equity also plays a role since the principle of common but differentiated responsibilities requires taking into account the needs and differentiated capabilities of developing countries as compared to industrialized countries, while at the same time reminding the Parties that all States share “common responsibilities” for the protection of the environment to the benefit of present and future generations.

The Montreal Protocol was the first MEA to explicitly state the link between the compliance of developing countries and provision of financial assistance and transfer of technology. To this end, the Protocol provides for the establishment of the Multilateral Fund, which is funded by developed countries, to “meet all agreed incremental costs of [developing countries] Parties in order to enable their compliance with the control measures”.28 The notion of “agreed incremental costs” implies that the Multilateral Fund’s financial obligation is not open-ended. Incremental costs include “cost of conversion


26 See Montreal Protocol Arts. 5 and 10; Climate Change Convention, Art. 3; Kyoto Protocol to the Climate Change Convention, Art. 10; Convention on Biological Diversity, Arts. 16-20; Convention to Combat Desertification, 33 ILM (1994) 1328, Arts.16-20.

27 R. Wolfrum, supra note 3, p. 112.

28 Montreal Protocol, Art. 10 (1).
of existing production facilities”, “cost of establishing new production facilities for substitutes of capacity equivalent to capacity lost when plants are converted or scrapped, including: cost of patents and designs and incremental cost of royalties; capital cost; cost of training, as well as the cost of research to adapt technology to local circumstances”.29

A comparable system exists under the Climate Change Convention and the Biodiversity Convention. Both agreements contain similar provisions to finance capacity-building activities in developing countries. Under these agreements the role of the Global Environmental Facility (GEF),30 which is the major international mechanism for financing global environmental efforts with a view to assist States Parties in complying with the obligations set forth in several environmental conventions, should be underscored. In particular, the GEF has been designated to act as the financial mechanism under Article 11 of the Climate Change Convention,31 Article 11 of the Kyoto Pro-

30 The GEF was established through a Resolution adopted by the Executive Directors of the World Bank in 1991 (World Bank, Resolution No.9I-5, 1991). As of April 1992, the States participating in the GEF agreed to undertake a revision of this mechanism, which was initially established for a three-year pilot phase. The restructuring of the Fund was considered a key item in the preparations for the Rio Summit as well as in the course of the negotiations of Convention on Climate Change and the Convention on Biological Diversity. Developing countries affirmed the need of restructuring the GEF in accordance with principles of universality, transparency, and democracy. Agenda 21 in its Chapter 33 endorsed such concerns affirming that the restructured GEF “should encourage universal participation”, it should ensure “a governance that is transparent and democratic in nature, including in terms of decision-making and operations, by guaranteeing a balanced and equitable representation of the interests of developing countries and giving due weight to the funding efforts of donor countries”, and it should also ensure “predictability in the flow of funds by contributions from developed countries, taking into account the importance of equitable burden-sharing.” (Chapter 33.14, Agenda 21). A new instrument was thus adopted by the three implementing agencies, namely the World Bank, the UNDP and the UNEP, in March 1994. See Instrument for the Establishment of the Restructured Global Environment Facility, 7 July 1994. See also Instrument for the Establishment of the Restructured Global Environment Facility, 19 June 2003 (with amendments), at www.gefweb.org/. On the GEF see: L. Boisson de Chazournes, The Global Environment Facility as a Pioneering Institution. Lessons Learned and Looking Ahead, GEF Working Paper 19, November 2003.
tocol and Article 21 of the Biological Diversity Convention. Following the growing environmental concerns regarding desertification and the pollution caused by persistent organic pollutants, the 1994 GEF Instrument has been amended. By virtue of this amendment, the GEF also became the financial mechanism of the Convention to Combat Desertification and of the Stockholm Convention on Persistent Organic Pollutants.

Under these agreements the provision of technical and financial assistance is recognized as a means to strengthen the capacity of developing countries to comply with their treaty obligations. It is conceived as an inducement towards this end.

The agreements also state that the obligation of developing countries to comply with treaty obligations “will depend upon” the implementation by developed countries of the provision of financial cooperation and transfer of technology. Compliance in this context is looked upon from the angle of developed countries’ behaviour. In particular, under the Montreal Protocol if the provision of technical and financial assistance does not work effectively, developing States may refer the matter to the Meeting of the Parties, which must decide on appropriate action. Developing States are thus given the power to put pressure on developed States to ensure that they have the necessary means to meet their commitments.

In contrast to the Montreal Protocol, the Climate Change Convention, the Kyoto Protocol and the Biodiversity Convention, the Convention to Combat Desertification contains lesser commitments from developed countries. This approach is likely due to the fact that desertification has often been considered as a regional problem affecting only some States. However, the recent

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34 Convention to Combat Desertification, Art. 20. See also Convention to Combat Desertification, Report of the Sixth Conference of the Parties, Decision VI/6, 2003, ICCD/COP(6)/11/Add.1.


36 Montreal Protocol, Art.5 (5)-(7).

37 Art. 20 (1) of this text limits the role of assistance by developed countries stating that Contracting Parties, taking into account their capabilities, “shall make every effort to ensure that adequate financial resources are available for programmes to combat desertification and mitigate the effects of drought”. Devel-
inclusion of land degradation as one of the focal areas of the GEF will certainly change this perception.

Another important means for ensuring compliance with environmental obligations is the submission of national reports by contracting Parties. Reporting on planned programs and policies plays a central role in the compliance process. For instance, under the Montreal Protocol, States must submit reports regarding the reduction in consumption of chlorofluorocarbons and other controlled substances. The data and information reported by Parties have become a valuable source of information and a significant monitoring measure to determine compliance by Parties with their obligations. However, many countries may have problems in complying with reporting procedure requirements, such as accurate and timely data reporting, due to a lack of technical and financial resources. In this case, the provision of financial and technical assistance may be a useful means to ensure that countries provide the data required by the MEA. As an example, the provision of financial and technical assistance has proved to be a useful means for ensuring that Russia and a number of other Parties provide the data required by Article 7 of the Montreal Protocol concerning production, imports, and exports of controlled substances.

To sum up, technical and financial assistance may take multiple forms. A common feature is the strengthening of the capacities of developing countries to comply with the relevant agreements. Financial and technical assistance may also prove to be of great help for ensuring respect with treaty commitments in case of non-compliance. In such cases, the provision of technical and financial assistance acts as an ex post mechanism for ensuring return to compliance.


40 P. Birnie/A. Boyle, supra note 19, p. 521.
III. Technical and Financial Assistance as a Means for Restoring Compliance

Non-compliance procedures have been created within the framework of several MEAs. Provision of assistance to enable Parties to achieve compliance is typical in these new compliance procedures. One of the essential features of these mechanisms is the effort to ensure continuing cooperation between States, even in case of non-compliance by some Parties. Non-compliance procedures have a double basis: the interest of each country to cooperate and the interest of all others to have the country cooperate.

1. Montreal Protocol Non-Compliance Procedure

The non-compliance procedure adopted by parties to the Montreal Protocol is the pioneer of this type of procedure. Under the Montreal Protocol non-compliance procedure, one or more States Parties to the Protocol, the non-compliant Party itself and the Secretariat may initiate the procedure. One of the innovations of this scheme is the creation of an Implementation Committee consisting of ten States Parties, which is charged with receiving, considering and reporting on information concerning compliance with the provisions of the Protocol.

The Committee may “undertake, upon the invitation of the Party concerned, information-gathering in the territory of that Party for fulfilling the functions of the Committee” and it “maintains, in particular for the purposes of drawing up its recommendations, an exchange of information with the Executive Committee of the Multilateral Fund related to the provision of financial and technical cooperation, including the transfer of technologies to Parties operating under Article 5, Paragraph 1, of the Protocol”. The function of the Committee is to try to secure “an amicable solution of the matter on the basis of respect for the provisions of the Protocol”. It reports to the Meeting of the Parties that may take a number of measures which include as-

sistance of a financial or technical nature to improve the capacity of States parties and the suspension of certain rights and privileges.44

This procedure has been invoked on several occasions by Parties to the Montreal Protocol who are in difficulty, particularly by Russia, Belarus, Ukraine, and a number of other States from Eastern Europe and the former Soviet Union.45 Various measures have been recommended by the Meeting of the Parties to deal with these problems of non-compliance, including the provision of technical and financial assistance, notably through the GEF. In these situations, GEF financing was used as an incentive and contributed to the resolution of the issue through the Montreal Protocol non-compliance procedure.46

The GEF financial assistance granted to the Russian Federation under a recommendation by the Montreal Protocol Implementation Committee and adopted in 1995 by the 7th Meeting of the Parties provides a good example of such a situation.47 After several years of financial assistance from the GEF and consistent monitoring by the Implementation Committee, the Russian Federation finally completed the phase-out of ozone-depleting substances as required by the Montreal Protocol. This was a remarkable achievement for which the Parties commended Russia’s efforts “to comply with the control measures of the Montreal Protocol” while at the same time recognizing “the support and assistance rendered by Parties to the Montreal Protocol to enable compliance by the Russian Federation.”48 Thus, financial and technical assistance has been a useful incentive for Parties found to be in non-compliance with their Protocol obligations to return to compliance.49

44 ibid., Montreal Protocol, Report of the Fourth Meeting of the Parties, Annex V.


49 For example, these Parties include: the Czech Republic, Latvia, Lithuania (Report of the 8th Meeting of the Parties to the Montreal Protocol, Decisions VIII/22-25, UNEP/OzL.Pro8/12 (1996)), Azerbaijan, Belarus, Estonia, Ukraine, Uzbekistan (Report of the 10th Meeting of the Parties to the Montreal Protocol, Decisions X/20-28, UNEP/OzL.Pro10/9 (1998)), Armenia, Kazakhstan, Tajiki-
same procedure has also offered a useful means to ensure that countries comply with reporting requirements established under Article 7 and to push Contracting Parties to submit a timetable for the ratification of subsequent amendments to the Montreal Protocol.\textsuperscript{50}

2. Kyoto Protocol Non-Compliance Procedure

The non-compliance procedure approved in 2001 by the Conference of the Parties to the Climate Change Convention, serving as Meeting of the Parties to the Kyoto Protocol provides another example where the provision of technical and financial assistance plays an important role in order to restore compliance with treaty obligations.\textsuperscript{51} Because of the general development of the procedural structures of non-compliance mechanisms and the specific characteristics of the Kyoto Protocol, this procedure is a very elaborate one.\textsuperscript{52} In particular, under this procedure two branches are established, namely, the facilitative branch and the enforcement branch. This distinction helps to highlight the role of financial and technical assistance in the Kyoto Protocol non-compliance procedure.

The facilitative branch relies on the principle of common but differentiated responsibilities, taking into account the respective capabilities of States Parties. The positive aim of the facilitative branch is confirmed by Article XIV of the Annex to Decision 24/CP.7 which lists the consequences which may be imposed by the facilitative branch in cases of non-compliance. Such consequences include:

(a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;

\begin{itemize}
\item \textsuperscript{50} This was, for example, the case for Latvia. Because this State did not submit its timetable for the ratification of the London Amendment to the Montreal Protocol, at its 17\textsuperscript{th} meeting, the Implementation Committee reminded Latvia that, “in accordance with the GEF (...), the process for approval by GEF of the phase-out projects could begin only after GEF had been informed of the timetable for ratification (...).” Implementation Committee, Report, 17th Meeting, (1997). See also, C. Romano, supra note 45, pp. 82-84.
\item \textsuperscript{51} Climate Change Convention, Conference of Parties, Decision 24/CP.7 and its Annex, FCCC/CP/2001/13/Add.3.
\item \textsuperscript{52} S. Urbinati “Non-Compliance Procedure under the Kyoto Protocol”, Baltic Yearbook of International Law, vol. 3, 2003, p. 244.
\end{itemize}
(b) Facilitation of financial and technical assistance to any Party concerned, including technology transfer and capacity building from sources other than those established under the Convention and the Protocol for the developing countries (...).

Thus, it is recognized that there is no point in imposing penalties when non-compliance stems from a lack of financial or technical resources. The appropriate response is to devise a plan for the provision of assistance to enable the Party concerned to implement the Protocol more effectively. In case a State Party has deliberately chosen not to comply, then the consequences may take the form of sanctions. In particular, under Article XV of the Annex to Decision 24/CP.7 adopted in 2001, the enforcement branch ascertains non-compliance of Annex I Parties regarding provisions concerning methodology and reporting requirements, the quantified emission limitation or reduction commitments and the eligibility requirements for the use of the flexibility mechanisms. In cases where a situation of non-compliance is established, the enforcement branch may impose consequences on the non-compliant Party ranging from a mere declaration of non-compliance and an order to develop a compliance plan in less severe cases to suspension of eligibility to use one or all of the flexibility mechanisms, or a deduction of the number of tonnes equal to 1.3 times the amount in tonnes of excess emissions from the Party’s assigned amount for the second commitment period in the most severe cases.

Non-compliance procedures generally stress the importance of technical and financial assistance. Under the Basel Convention mechanism, a committee was established. Its functions relate inter alia to the “facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity building.”

As in the case of the Basel compliance mechanism, the interplay between financial and technical assistance and compliance is a key feature of non-compliance procedures. The provision of assistance is linked to the idea of

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54 Ibid., Art. XV (1), (4) (5). See Kyoto Protocol, Arts. 5 (1) (2), 6, 7 (1) (4), 12, 17.
55 Ibid., Art. XV (1), (2).
56 Ibid., Art. XV (5), (6).
bringing a country back to compliance with its commitments or contributing to helping it build its compliance behaviour to reach its commitments.\textsuperscript{58}

IV. Financial and Technical Assistance as a Facilitator in Third Party Dispute Settlement Mechanisms

In the field of dispute resolution, technical and financial assistance may be provided to developing countries to encourage these States to have recourse to an international third party body for the settlement of their disputes. This is the case, for example, of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice and other similar trust funds. Besides trust funds, an interesting form of technical assistance is that furnished by the Advisory Center on WTO Law, an international organization that provides legal advice on WTO law to developing countries for, \textit{inter alia}, the purpose of participating in WTO dispute resolution proceedings. Disputes with an environmental facet may be brought to each of these fora, taking into account the jurisdiction of each of them.

A \textit{sui generis} case in the domain of technical and financial assistance in dispute resolution procedures is constituted by the United Nations Compensation Commission (UNCC), a Security Council subsidiary body charged with compensating all victims of the 1990-1991 conflict between Iraq and Kuwait. Although it is not an international tribunal, the UNCC is called upon to adjudicate claims and is bound by the qualification of Iraqi responsibility made by the Security Council, acting under Chapter VII of the UN Charter, in its resolution 687 of 1991. Iraq is responsible for direct damages and losses deriving from its invasion and occupation of Kuwait and, as a consequence, the UNCC has the task to evaluate the claims and award the appropriate amount to the claimants. In this process, there are many interesting elements of technical assistance aimed at facilitating the compliance of the

\textsuperscript{58} The draft procedures and mechanisms on non-compliance developed by the Intergovernmental Committee for the \textit{Cartagena Protocol on Biosafety} provide for the "provision of financial and technical assistance, technology transfer, training and other capacity-building measures" in case of non-compliance. The recently established Aarhus non-compliance mechanism also indicates the provision of advice and the facilitation of assistance to Parties regarding the implementation of the Convention as possible measures for restoring compliance with the treaty obligations. See Intergovernmental Committee for the \textit{Cartagena Protocol on Biosafety}, (2002), UNEP/CBD/ICCWP/C4/3; Aarhus Convention, Report of the First Meeting of the Parties, ECE/MIL/PP/2/Add.8
Commission with its own mandate, as well as some elements of financial assistance.

1. The Secretary-General’s Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice

This Fund was established in 1989 by the Secretary-General under the Financial Regulations and Rules of the United Nations, after consultations with the President of the International Court of Justice (ICJ). In accordance with the Terms of Reference of the Fund, financial assistance is to be provided to States for expenses incurred in connection with (a) a dispute submitted to the ICJ by way of ad hoc agreement or (b) the execution of a judgment of the Court resulting from such ad hoc agreement, in order to avoid that peaceful settlement of disputes be impaired by the lack of financial or human resources.

The Fund is financed by voluntary contributions from States, international and non-governmental organizations as well as by natural and juridical persons. A three-member Panel of independent experts makes recommendations to the Secretary-General on whether a State has the necessary requirements for applying at the Fund and, if so, which amount of financial assistance should be given. The Secretary-General then takes the final decision.

Since 1989 the Secretary-General has received six applications and in each case the assistance given through the resources of the Trust Fund, though limited, has been significant. However, the last application was filed in 1997 and since then the Trust Fund has not received any other request. This is mainly due to the restrictive character of the conditions for applying for the funds: in fact, the use of the Trust Fund is “limited to cases [...] in which the jurisdiction of the Court is not a contentious point”, which means that the dispute for which a developing country seeks financial assis-

59 This provision thus excludes the possibility of benefiting from the assistance of the Trust Fund in case of unilateral recourse to the ICJ, either by way of the optional clause, or by way of a compromissory clause.

60 Terms of Reference, Guidelines and Rules of the Secretary-General’s Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, para. 7. UN Doc. A/44/PV.43 (1989).

61 Ibid., para. 3.

tance must have been submitted to the Court by an *ad hoc* agreement. Cases brought before the ICJ unilaterally or by a compromissory clause contained in a treaty or by an optional declaration *ex Art. 36 (2)* of the ICJ Statute, are not eligible for funds. This restrictive condition finds its *raison d’être* in the will of the Secretary-General to avoid any political appreciation on the operation of the Fund that could discourage potential contributors. As one commentator pointed out, “since international litigation is ultimately considered an unfriendly act, doing so unilaterally and with resources made available by the international community would be politically unacceptable”.63

To date, six developing countries have received an award from the Trust Fund.

Financial assistance has so far been sought for boundary disputes brought before the ICJ. The last two applicants were awarded US$ 350,000 each, in June 2004, following a recommendation to the Secretary-General made by the Panel of Experts.64 The resources of the Trust Fund, provided by 23 States, are, as of today, US$ 1,163,162.65

2. *Other Financial Mechanisms*

The Secretary-General of the Permanent Court of Arbitration, with the approval of the Administrative Council, established a similar fund in 1994, called the Financial Assistance Fund for the Settlement of International Disputes.66 This fund is aimed at assisting States by defraying the costs of arbitration, and it is supported by voluntary donations from States, intergovernmental organizations, national institutions and natural and legal persons. Eligible States are the States Party to the Hague Convention for the Pacific Settlement of International Disputes of 1899 or of 1907, having concluded an agreement for the purpose of submitting one or more disputes for settlement under the auspices of the Permanent Court of Arbitration. Furthermore, eligible States must appear on the DAC List of Aid Recipients, prepared by the

63 Ibid., p. 556.
64 *Press Release* of the Secretary General of 4 June 2004 L/3070, UN Doc. SG/2087.
Organization for Economic Cooperation and Development (OECD).67 A Board of Trustees, composed of persons “of the highest moral standing”,68 decides whether to allocate funds or not.69 Since the inception of the fund, Norway, Cyprus, the United Kingdom, South Africa, the Netherlands, and Costa Rica have made contributions, and four grants of assistance have been made: one to a Central Asian State, one to an Asian State, and two to African States. These grants have allowed the parties to defray the costs of arbitration.70

3. International Tribunal for the Law of the Sea Trust Fund

A similar trust fund has been established also for the International Tribunal for the Law of the Sea (ITLOS). The UN General Assembly through Resolution 55/7 (2001) requested the Secretary-General to establish and administer a Trust Fund to assist parties in the settlement of disputes through the Tribunal.71 The functioning of the ITLOS Trust Fund is very similar to that of the ICJ Trust Fund. Like the latter, the ITLOS Trust Fund is financed by voluntary contributions by States, international organizations, non-governmental organizations and natural and juridical persons; furthermore, a Panel of independent experts is called to review applications made by States Parties and make recommendations to the Secretary-General of the United Nations on the amount of financial assistance to be given. The main difference between the two trust funds seems to have been dictated by the will of “correcting” a

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67 Para. 5 of the Terms of Reference, supra note 55. The DAC List is designed for statistical purposes. It helps to measure and classify aid and other resource flows originating in developing countries. For the latest version of the DAC List, see http://www.oecd.org/dataoecd.

68 ibid. para. 8.

69 ibid. para 10.

70 See Permanent Court of Arbitration, 103rd Annual Report (2003) on the activities of the Court, the functioning of the administrative services and the expenditure in 2003, at http://www.pca-cpa.org

71 Costs that can be defrayed include: preparation of the application and the written pleadings; professional fees of counsel and advocates for written and oral pleadings; travel and expenses of legal representation in Hamburg during the various phases of a case; execution of an order or judgment of the Tribunal. See para. 9 of UN General Assembly Resolution 55/7 (2001) (UN Doc. A/RES/55/7 (2001). The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs maintains a “list of offers of professional assistance which may be made on a reduced fee basis by suitably qualified persons or bodies” (ibid., para. 13). See C. Romano, supra note 62, p. 556.
defect of the ICJ fund: in the case of the ITLOS Trust Fund, funds can be given regardless of whether the case has been brought before the Tribunal unilaterally or by common agreement.\textsuperscript{72}

4. Advisory Center on WTO Law

The Advisory Center on WTO Law (ACWL) is an international organization independent of the WTO, established in 2001 to provide legal advice on WTO law, support in WTO dispute settlement proceedings and training in WTO law to developing countries and customs territories, countries with economies in transition and least developed countries (hereinafter: developing countries). In particular, the Advisory Center on WTO Law was created to help developing countries improve their participation in the multilateral trading system.\textsuperscript{73}

At the request of a State, prior to the initiation of dispute settlement proceedings, ACWL lawyers may prepare a legal opinion on a case that must be brought before the WTO dispute settlement body. ACWL lawyers work together with the delegates to prepare for consultations and will attend the consultations, if requested to do so. During the panel proceedings, ACWL lawyers work together with the delegates to draft the written submissions and oral statements and prepare the answers to the panel’s questions. This capillary, step-by-step assistance has costs that vary, depending on the share of world trade and GNP per capita of the country calling for ACWL services. The credibility of the ACWL legal advice is guaranteed by its administrative and financial independence. Financial resources of the Center are furnished by donor countries and all activities of the ACWL are supervised by a Management Board composed of independent persons.\textsuperscript{74}

\textsuperscript{72} C. Romano, supra note 62, pp. 556-557.

\textsuperscript{73} At the Signing Ceremony for the ACWL, the then Director-General of the WTO, Mr. Renato Ruggerio stated: “In addition and from a systemic point of view, helping developing countries improve their participation in the multilateral trading system contributes to the credibility of the WTO. The credibility of such a rules-based system is dependent on its universality. As you are well aware, I strongly promoted universal membership of the WTO, but membership is not enough to achieve true universality. This depends on the participation of its Members in the system. In this area we face a serious challenge which is aggravated by the necessary complexity of the WTO rules and disciplines and the multiple areas it covers. If we are not sensitive, this necessary complexity may well result in an instrument of marginalisation of those who lack human resources and expertise”, at http://www.acwl.ch.

\textsuperscript{74} See http://www.acwl.ch.
ACWL is an interesting mechanism offering assistance to developing countries called or wishing to appear before the WTO. Considering the rising number of disputes settled or to be settled by the WTO Dispute Settlement Body, it is clear that ACWL provides an important service. As a matter of fact, notwithstanding its relatively recent creation, the ACWL, as of January 2005, has provided support for developing countries in at least 18 cases, among them the Trade Description of Sardines Case,\textsuperscript{75} the Measures Affecting the Automobile Industry Case,\textsuperscript{76} and the Transitional Safeguard Measures on Cotton Yarn Case.\textsuperscript{77}


The UNCC was established in 1991 with the task to indemnify States, international organizations, enterprises and private persons having suffered losses or damage as a result of the Iraqi invasion and occupation of Kuwait in 1990-1991.

Discussing compliance in the context of the UNCC is a completely different matter than discussing compliance of a State with its commitments. Here compliance must be seen as compliance of the Commission and of Iraq with the criteria to be followed for the indemnification of eligible claimants. These criteria have been established by the Security Council, at the moment of the creation of the UNCC, in its Resolution 687. In accordance with that resolution, the UNCC is called to indemnify only those claimants that meet certain requirements \textit{ratione materiae, temporis, loci and personae}.\textsuperscript{78} The

\textsuperscript{75} Peru vs. European Communities, WT/DS231. ACWL provided legal advice to Peru.
\textsuperscript{76} India vs. European Communities, WT/DS146. ACWL provided legal advice to India.
\textsuperscript{77} United-States vs. Pakistan, WT/DS192. ACWL provided legal advice to Pakistan.
\textsuperscript{78} In accordance to Resolution 687, “Iraq is liable, under international law, for any direct loss, damage, including environmental and the depletion of natural resources, or injury to foreign Government’s nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait” (S/RES/687 (1991)). Consequently, commensurate with Iraq’s liability as affirmed by this Security Council Resolution, the UNCC is called to indemnify direct damages, suffered by States, international organizations, corporations or individuals, within the territories involved in the Iraqi conflict, in the period 2 August 1990 – 2 March 1991.
Secretary-General, in his report of 2 May 1991, in which he was asked to draw the constituent guidelines of the Commission, noted that the UNCC is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims.\textsuperscript{79}

As a result, the Commission, though undoubtedly a dispute settlement body, does not follow the same procedures as international courts and tribunals in its adjudication. In particular, before the UNCC true equality does not exist between the claimants and Iraq.\textsuperscript{80} Notwithstanding the presence of certain features of the due process of law, the procedure before the UNCC is a \textit{sui generis} one.

Technical and financial assistance are particularly important in the environmental field for a number of reasons: the absence of \textit{in loco} scientific monitoring activities during the hostilities, the unwillingness of the belligerents to provide all information they possess about the impact of military operations on the environment, the fact that often environmental damage is the result of an inextricable addition of wartime illicit activities and previous peacetime licit ones and, last but not least, the lack of international precedents in the field of environmental losses suffered during warfare,\textsuperscript{81} are all complexities that may require careful scientific evaluation.

There are at least two aspects of the Commission that deserve particular attention. The first is related to the means that have been conceded to Iraq for a specific category of claims, \textit{i.e.} claims for environmental damage and the depletion of natural resources, the so-called F4 claims. The second aspect deals with the technical assistance role played by the Commission's secretariat.

\textsuperscript{79} \textit{Report of the Secretary-General pursuant to Paragraph 19 of Security Council Resolution 687 (1991), UN Doc. S/22559, 2 May 1991.}

\textsuperscript{80} In particular, Iraq does not have access to claims (except in a few cases), but only to the reports made by the Executive Secretary under Art. 16 of the Provisional Rules for Claims Procedure. Iraq can then submit its views and comments to these reports within a strict time-limit. See infra, note 89.

6. Financial and Technical Assistance to Iraq before the United Nations Compensation Commission

The Commission decided in 2001 to revise its internal functioning in order to create a procedure more similar to that of international courts and tribunals for certain particularly important claims. This review process has been conducted for the treatment of claims concerning damages to the environment and depletion of natural resources (i.e. claims belonging to category F4), which are by far the largest in terms of awards claimed. Thus, in Decision 124 of 19 June 2001, Iraq was given the possibility of benefiting from the assistance of “experts” during the procedure for the treatment of F4 claims. This type of assistance is, however, limited to claims belonging to category F4, without the possibility of extending this provision to other categories of claims, or even to use the work of the F4 Panel of Commissioners as a precedent for treating claims of other categories.

The reason for providing assistance to Iraq is the “complexity and the limited amount of relevant international practice” for this kind of claim. This exceptional procedure is also aimed at “assisting the ‘F4’ Panel of Commissioners in the conduct of its tasks, through ensuring the full development of the facts and relevant technical issues, and in obtaining the full range of

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83 Decision 124 of the Governing Council follows Decision 114, adopted on 7 December 2000 (UN Doc. S/AC.26/Dec. 114 (2000)). In accordance with Decision 114, “the Iraqi request for access to funds to pay for legal and technical experts to assist in its responses to claims is to be satisfied” (para. 3, h); “oral proceedings attended by the claimants and Iraqi experts should be scheduled by panels on a systematic basis” (para. 3, o); “technical expertise for Iraq should be financed by a reasonable amount of the Commission’s budget or its operating reserve or any other means deemed appropriate” (para. 3, p); “the provision of technical environmental expertise to Iraq for the review of the “F4” environmental claims” (para. 3, r). Furthermore, paragraph 22 stated that:

taking into account the Executive Secretary’s recommendations, the Working Group discussed the issue of making funds available to Iraq for purposes of hiring experts to assist in preparing Iraq’s responses to claims in general and in particular the environmental claims. It has decided to consider further, with the assistance of the secretariat, various proposals relating to the provision of assistance to Iraq, noting that some Council members indicated that such proposals should not relate to claims other than the “F4” claims.

Decision 124 endorsed the provisions of Decision 114, following however the suggestion of “some Council members [that] indicated that such proposals should not relate to claims other than the ‘F4’ claims”.

84 Para. 8 of Decision 124.
views including those of Iraq.” It is thus evident that the reason for the adoption of such a procedure for the treatment of environmental claims is twofold: on the one hand, given the size of this kind of claim, the UNCC wanted to give Iraq the possibility to promote its “legitimate interests”; on the other hand, the Commission wanted to facilitate the task of the F4 Panel, which is called upon, as are all panels, to carry out a fact-finding and verification function. In such context, the assistance provided can be seen as a means to facilitate the achievement of decisions within a procedure that for F4 claims is closer to that of an international court or tribunal, if compared to the procedure followed at the UNCC for other claim categories.

Technical assistance in the wording of Decision 124 means the intervention of technical and legal “experts”, called to assist Iraq in the process of evaluation of F4 claims. Iraq is free to select these experts, but they must be approved by the Executive Secretary, who has to check their “professional qualifications and experience”. Furthermore, Iraq has freedom with regard to the assignment of tasks to the experts. However, the Executive Secretary has to approve these tasks, especially keeping an eye on their costs, as the experts are financed by the administrative budget of the Commission. The total budget established in 2001 by the Governing Council for the activities of these experts did not exceed US$ 5 million. The experts were paid directly by the Commission, in order to “ensure that the funds are spent fully in accordance with the purpose of this Arrangement”. Their role is to give assistance to Iraq in preparing responses to requests made under Article 16 of the Provisional Rules for Claims Procedure, in

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85 Para. 2 of Decision 124.
86 Para. 3 of Decision 124. Decision 124 does not contain any mention as to the procedures to be followed in appointing the experts, the number of experts that Iraq can appoint, the documents they may have access to, etc. These details are left to the discretion of Iraq.
87 Para. 5 of Decision 124.
88 Para. 5 of Decision 124. The Governing Council, however, has the power “to revise these figures at a later stage in light of new developments, and may decide to increase or decrease them” (paragraph 7). This possibility has been effectively used: in 2004, the Governing Council decided, in its Decision 226, to reiterate technical assistance to Iraq for the fourth and fifth instalments of F4 claims, allocating for this purpose another US$ 4 million.
89 Para. 6 of Decision 124.
90 Art. 16 of the Provisional Rules for Claims Procedure states that “[1) The Executive Secretary will make periodic reports to the Governing Council concerning claims received. These reports shall be made as frequently as required to inform the Council of the Commission’s case load but not less than quarterly. The re-
preparing “written submissions and oral proceedings before the panel in accordance with Article 36 of the Provisional Rules for Claims Procedure”91 and in preparing any other communication with the UNCC in relation to F4 claims. In other words, these experts do not merely provide “expertise”, in the sense that they do not simply state the know-how available in a specific scientific field, but rather they constitute a means at the disposal of Iraq to submit its views to the Commission with the necessary scientific and legal corroborations.

Before the adoption of Decision 124, Iraq was, of course, free to be assisted by experts of its choice, but that was at its own expense outside the purview of the UNCC structure and budget. Through Decision 124, Iraq acquired the right to benefit from the assistance of experts, financed directly by the Commission.93

ports shall indicate: a) Governments, international organizations or other eligible parties that have submitted claims; b) the categories of claims submitted; c) the number of claimants in each consolidated claim; d) the total amount of compensation sought in each consolidated claim. In addition, each report may indicate significant legal and factual issues raised by the claims, if any. 2) The Executive Secretary’s report will be promptly circulated to the Government of Iraq as well as to all Governments and international organizations that have submitted claims. 3) Within 30 days in case of claims in Categories A, B and C, and 90 days in case of claims in other categories, of the date of the circulation of the Executive Secretary’s report, the Government of Iraq as well as Governments and international organizations that have submitted claims, may present their additional information and views concerning the report to the Executive Secretary for transmission to panels of Commissioners in accordance with Article 32. […]”.

91 Art. 36 of the Provisional Rules for Claims Procedure provides that “A Panel of Commissioners may: a) in unusually large and complex cases, request further written submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings; b) request additional information from any other source, including expert advice, as necessary”.

92 Para. 4 of Decision 124.

93 The Panel’s reports, however, are silent over the contribution given by the experts chosen by Iraq. The First Instalment of F4 claims did not benefit from the provisions of Decision 124, which was adopted a few days before the adoption of the First Report of the F4 Panel. For the Second and Third Instalments of F4 claims Iraq was assisted by experts in accordance with Decision 124. It is difficult to draw conclusions as to the practical impact of this last decision on the procedure for the treatment of F4 claims.

The UNCC claims are divided into instalments. The first three instalments of F4 claims are composed of "monitoring and assessment" claims (hereinafter: M&A claims), while the remaining two consist in substantive claims. M&A claims are those portions of environmental claims that had been already filed by claimants and that, under request of the Governing Council to the claimants, have been identified and filed separately. M&A activities eligible for compensation before the UNCC are those carried out for the purpose of evaluating and halting the environmental harm and restoring the environment, as well as those undertaken for the screening of public health for the purpose of combating health risks as a result of environmental damage. It is all the more important to emphasize that M&A claims are not ancillary or subsidiary losses, but independent of related substantive claims for environmental damage. Moreover, the Governing Council decided to treat M&A claims differently from substantive environmental claims in granting them priority in the processing and payments. The importance of M&A claims within the environmental claims' review process has also been underscored by the F4 Panel:

the results of some monitoring and assessment activities will assist [the Panel's] review of related substantive claims. [The Panel] recalls that the Governing Council's decision to authorize expedited review of monitoring and assessment claims was, in large part, intended to make funds available to claimants to finance activities that might produce information to support their substantive 'F4' claims.

Thus, M&A claims are essential for the Panel's discharge of its duties and also for providing funds to the claimants to finance activities that might produce useful information on their substantive environmental claims. In the context of M&A claims, technical assistance played a useful role: the F4 Panel was assisted by several expert consultants in fields such as chemistry, biology, medicine, environmental economics, geology, etc., who produced numerous reports on all M&A claims setting out their opinions on the aptness of the M&A activity by reference to generally accepted scientific criteria. Their work thus contributed to levelling the playing field, by the intro-

96 O. Elias, "The UN Compensation Commission and Liability for the costs of Monitoring and Assessment of Environmental Damage", in M. Fitzmaurice/D.
duction, within the process of claims evaluation, of undisputed scientific findings. In this sense, the technical assistance role played by the expert consultants mentioned above takes the form of an expertise, regarding the consideration of the relevant scientific know-how in the pertinent fields.

8. The UNCC Compensation Fund as a Financial Means to Induce Compliance

A last point to be made relates to the raison d'être of the Compensation Fund. It appears to be a financial means which was created in order to induce Iraq to comply with Governing Council decisions with respect to the claims. In fact, it is not Iraq that indemnifies the claimants directly; Iraq is called to support the Compensation Fund with the revenues from its petroleum and petroleum products exports (in accordance with a quota that was up to 30% of revenues at the beginning of the 1990s, then reduced to 25% and finally, in May 2003, to 5%). This obligation derives from Security Council Resolution 692 and subsequent resolutions, adopted under Chapter VII of the UN Charter. The Fund, through the secretariat, indemnifies the claimants by virtue of the binding effect on the Fund of any Governing Council resolution.

V. Conclusions

The interplay between compliance and technical and financial assistance may be viewed as a multi-step process. Institutional mechanisms play a crucial role in this context. The main ratio for the interplay is that technical and financial assistance is seen as an effective means for inducing the compliance of developing countries with their treaty commitments.

Sarroshi, Issues of State Responsibility Before International Judicial Institutions, Hart Publishing (2004), pp. 219-236. The Panel’s reports, however, are silent on the contribution given by the experts chosen by Iraq. As mentioned (supra note 93), Iraq was assisted by experts in accordance with Decision 124 for the Second and Third Installments of F4 claims. The recourse to independent experts is not a novelty before the UNCC. In fact, it was provided for as early as 1992 in the Provisional Rules for Claims Procedure. Art. 36 of the Provisional Rules gives the Panels the discretionary power to appoint different kinds of “experts” (agencies, international organisations and individual experts) competent in various fields, for the purpose of assisting the Panel in the examination of “unusually large and complex claims”. In these cases, the Panels themselves benefit from technical assistance in their evaluation of claims.
The provision of assistance may use different channels. It may consist in the establishment of specific funds or complex funding mechanisms such as the GEF for promoting compliance with treaty commitments. It may also find application in the context of non-compliance procedures; financial and technical assistance is thereby viewed as a means for allowing compliance by developing countries. Under these procedures, Parties to a treaty seek to shape a consensus on the issue in conflict, and financial and technical assistance contributes to strengthening the stability of the treaty regime as a whole.

Under the Montreal Protocol, the Climate Change Convention, the Kyoto Protocol and the Biodiversity Convention, providing technical and financial assistance is seen as an application of the principle of common but differentiated responsibilities. These agreements go as far as providing for sanctions for non-compliance by developed countries with their obligation to provide financial and technical assistance.

The interplay between compliance and technical and financial assistance takes on specific shape in the field of dispute settlement. It is used as a means to facilitate resorting to dispute resolution mechanisms. The case of the UNCC, although very specific, is interesting as a form of technical assistance. On the one hand, it is viewed as an important means to facilitate compliance by the guilty State, i.e. Iraq, and on the other hand, the Commission can have recourse, in its assessment of the indemnification of eligible claims, to the expertise of the professionals of the relevant scientific fields.