



UNDP/GEF Black Sea Ecosystems Recovery Project

FINAL REPORT

Project Component Black Sea Commission Institutional Review

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List of Abbreviations

| | |
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| AG | Advisory Group |
| AG CBD | AG on Conservation and Biological Diversity |
| AG ESAS | AG on Environmental Safety Aspects of Shipping |
| AG ICZM | AG on Integrated Coastal Zone Management |
| AG IDE | AG on Information and Data Exchange |
| AG FOMLR | AG on Fisheries and other Marine Living Resources |
| AG LBS | AG on Land Based Sources of Pollution |
| AG PMA | AG on Pollution Monitoring and Assessment |
| BSC | Commission for the Protection of the Black Sea Against Pollution (the body responsible for the implementation of the Bucharest Convention) |
| BSC PS | Permanent Secretariat of the Black Sea Commission |
| BSERP | Black Sea Ecosystems Recovery Project (GEF-funded project within the BSEP) |
| BS SAP | Black Sea Strategic Action Plan |
| CP | Contracting Party |
| GEF | Global Environment Facility of the United Nations Development Programme |
| HELCOM | Baltic Marine Environment Protection Commission |
| ICPDR | International Commission for the Protection of the Danube River |
| OSPAR | Convention for the Protection of the Marine Environment of the North-East Atlantic |
| NFP | National Focal Point |
| RAC | Regional Activity Centre |
| UNDP | United Nations Development Programme |
| UNEP MAP | United Nations Environment Programme Mediterranean Action Plan (Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols) |
| WFD | European Union Water Framework Directive |

Executive Summary

This is the UNDP/GEF BSERP Final Report for the Black Sea Commission Institutional Review. The review was initiated to strengthen the ability of the Black Sea Commission to implement the Convention on the Protection of the Black Sea against Pollution (the Bucharest Convention) and the Black Sea Strategic Action Plan. The current situation was analyzed based upon a desk review of documentation, interviews with Commissioners, Secretariat staff and stakeholders, and benchmarking information from similar commissions. The analysis focused on legal, management and administration and financial/budgetary aspects of the Commission's operations.

The legal analysis led to the conclusion that while the Convention is outdated and not consistent with current trends in international environmental law it still provides the foundation for more effective regional efforts in combating marine pollution and improving the environmental status of the Black Sea. The Commissioners are committed to meeting the objectives of the Convention but the planned level of staffing for the Secretariat is not in place and key areas of expertise are missing.

The current organization structure is complex, inconsistent and unsustainable. While some contracting parties have made their annual contributions as anticipated others have been irregular. During the period of the review Georgia made its first contribution covering a two year period and committed to making double contributions annually to bring it up to date. The original financial contribution assumptions are still in place. The budget is often approved after the year for which it is valid has already started. It seems that the current level of budget is not adequate to meet the requirements of implementing the Convention.

Based upon these findings the Review Team made recommendations for immediate actions, short term adjustments and longer term considerations. The immediate recommendations are for the Commission to become more active, to streamline the operations, apply the rules and focus on outcomes. It is recommended that the Commission adopt a new structure which will have three functional units responsible for Information and Science, Law and Policy and Economic Sustainability and Project Management. The existing activities would be streamlined and organized under these three units. The Commissioners should also make a commitment to taking the necessary steps toward doubling the budget by the financial year 2008/2009.

In the longer term, it is recommended that the Convention and some of its subsidiary instruments be updated to take into account recent trends in international environmental law and to reflect changing circumstances including the fact that three of the countries are in the process of joining the European Union and it is the practice of the EU to become a party to all conventions to which member states belong.. It should also include the necessary mechanism for compliance monitoring. The Commission will require a substantial increase in staff and financial resources in the longer term to properly carry out its functions under its current mandate and to meet future requirements.

1. Introduction

This is the UNDP/GEF BSERP Final Report for the Black Sea Commission Institutional Review. It contains the findings and recommendations prepared by the Review Team and presented at the Institutional Review Commission Seminar May 10th and 11th 2006 in Istanbul, Turkey.

2. Objective

The objective of the Black Sea Commission Institutional Review as stated in the Terms of Reference is as follows:

The management review is being launched to consider ways to enhance the sustainability of the Commission and to improve its effectiveness in meeting its goals under the Convention and the Black Sea Strategic Action Plan.

.The review addressed the following questions:

- Are the Convention and existing mechanisms for its implementation meeting the expectations of key stakeholders?
- Is the present array of legal instruments developed under the Convention sufficient to assist the Black Sea countries to jointly implement pollution abatement strategies?
- Are there operational changes that should be considered to make the BSC and its subsidiary bodies more effective?
- Are there improvements that should be considered for BSC financial and budgetary systems, especially taking into account the phase out of UNDP / GEF support in 2007?
- Are there management lessons from the implementation of international conventions and strategic action plans for other water bodies that should be applied to the Black Sea?

3.Methodology

The methodology included a review of the documentation of the Commission and the Secretariat and interviews with Commissioners, technical staff, Advisory Group members, Secretariat staff and other key individuals. Site visits were made to five countries and a questionnaire was used to gather information in the sixth. The findings and recommendations were discussed with the Commissioners at a seminar in May 2006 dedicated solely to the Institutional Review.

- Desk review
 - Convention, Protocols and other relevant multilateral instruments
 - Internal Rules (Procedure and Financial)
 - Meeting agenda and minutes
 - Reports
 - Budgets and auditor's reports
- Interviews
 - Commissioners
 - Secretariat
 - Country Coordinators
 - Advisory Group Chairs and Members
 - Activity Centre Staff
 - Team Leaders
 - BSERP Staff
 - Other Donor Representatives
- Benchmarking
 - Baltic Marine Environment Protection Commission (HELCOM)
 - International Commission for the Protection of the Danube River (ICPDR)
 - Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)
 - United Nations Environment Programme Mediterranean Action Plan (Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols; Barcelona Convention)(UNEP MED ACTION PLAN)

The Review Team organized the findings into a report on the existing situation and following the initial session of the Commissioner seminar provided a set of recommendations. The findings and recommendations are contained in the following sections.

4. Existing situation

The overview of the existing situation is divided into legal, management and administration and budgetary components.

4.1 Legal

The Black Sea States' activities in the field of environmental protection take place under the 'umbrella' of the Convention on the Protection of the Black Sea against Pollution, adopted in 1992 at Bucharest (1992 Bucharest Convention), which together with additional protocols form the legal basis for regional cooperation. The 1992 Bucharest Convention is a typical "framework" instrument modelled on similar regional seas agreements adopted in the late 1970s to the early 1990s. Although drafted and adopted approximately at the same time as some 'second generation' regional seas treaties, such as the 1992 Helsinki (Baltic Sea, Helcom), the 1992 OSPAR (North Sea) and the 1995 Mediterranean conventions, the Black Sea framework in terms of its substance and conceptual approach is reminiscent of the much earlier 'first generation' regional seas regimes.

Although a modest attempt to rectify some of the most apparent shortcomings of the Bucharest Convention was made almost immediately after its adoption this did not change the outdated and archaic look of this document. Nevertheless, the apparent inadequacy of the Bucharest Convention as such may not necessarily directly impact the performance and efficiency of the Black Sea Commission, which still has sufficient mandate and authority to direct and assist its members in their implementation of the Convention and its subsidiary instruments.

However, the BSC achievements to date do not provide ground for too much praise. While both the 1993 Odessa Declaration and the 1996 Strategic Action Plan for the Black Sea (BS SAP) established specific and concrete targets and timetables for implementing the objectives of the 1992 Bucharest Convention, very few of these targets appear to have been accomplished on time. It is also symptomatic that the 2002 Sofia Declaration is entirely devoid of any precision (if compared with the 1993 Odessa Declaration) which may mean only one thing – the Contracting Parties' unwillingness to set up concrete objectives given their unfortunate previous experience.

On the whole, there are two principle conclusions that stem from the legal analysis of the existing regulatory framework established under the 1992 Bucharest Convention and its subsidiary instruments. First, from the point of view of its general adequacy and consistency with current trends in international environmental law-making the existing legal basis for regional environmental cooperation in the Black Sea is unsatisfactory; it is outdated. The second point, however, is that even in its current form this framework still provides foundation for more effective regional efforts in

combating marine pollution and improving environmental status of the Sea. Consequently, some immediate improvements in the performance of the BSC can be achieved without radical changes in the existing legal framework.

4.2 Management and Administration

The Commission has one member from each of the six contracting parties, Bulgaria, Georgia, Romania, Turkey, Russia and Ukraine. The Chair of the Commission is rotated on an annual basis among the Contracting Parties. The Commission holds one regular meeting each year and may hold extraordinary meetings as agreed by the CP's. The Commission's decisions are made on the basis of unanimity.

The Commission is supported by a Secretariat headed by an Executive Director. Staff Regulations contain the ToRs for seven Secretariat staff: At the time of the review four of the positions were occupied with two being performed by one individual. In addition there were two externally funded people, one of whom is acting as project manager for specific projects funded through external sources.

There are also total of sixteen subsidiary bodies: six activity centres, seven advisory groups: Environmental Safety Aspects of Shipping (AG ESAS), Pollution Monitoring and Assessment (AG PMA), Control of Pollution from Land Based Sources (AG LBS), Development of the Common Methodologies for Integrated Coastal Zone Management (AG ICZM), Conservation of Biological Diversity (AG CBD), Environmental Aspects of Fisheries and Other Marine Living Resources Management (AG FOMLR), Information and Data Exchange (AG IDE), and three *ad hoc* working groups: Working Group on the Water Framework Directive (WFD), State of Environment 2006 Working Group and the Danube/Black Sea Joint Technical Working Group, managed jointly with the ICPDR. Each group meets regularly up to twice per year.

The activity centres were designed as in kind contributions of the CP's. The situation in several of the countries have changed over time due to government reorganizations and changing budget priorities. At the time of the Institutional Review the Review Team was able to confirm that only two of the original six currently have funding from CP's to carry out activities to support the BSC.

The Commissioners are active and fully supportive of meeting the objectives of the Commission. They have a very high level of expertise and experience in marine environment and water management issues. The Commission is currently acting in a general supervisory role for the Secretariat, overseeing the activities conducted.

The Secretariat has worked under difficult conditions with respect to the level of staffing and the uncertainty created by the lack of consistency in receiving annual contributions. There is no documentation for the existing division of responsibilities. In the current situation the low number of staff means that not all responsibilities can be effectively carried out. Work load priorities are made by the individual staff member. The functions of the Secretariat are focused on the general areas of speciality of the

existing staff members. The other areas including environmental law and economics planned for the Secretariat are not properly addressed at present. This makes it difficult to provide implementable policy and regulatory recommendations that consider scientific, legal and economic factors.

The current organization is complex and inconsistent. The Advisory Groups have a number of issues which need to be addressed including: qualifications of members, continuity in membership and focus on outputs. The Advisory Groups are all supported by a single member of the Secretariat which limits the amount of support available, flexibility for meeting times and other issues. The materials produced by the Advisory Groups are not generally used by the decision makers in the Black Sea countries because they are not seen as being relevant to policy making.

The current organizational structure of the BSC is multi layered. There is little accountability within the existing organizational structure. For example, deadlines missed are often further extended and incomplete activities are rolled over to the next period. The resources, both human and financial, required to maintain such a complex organization are neither cost effective nor sustainable.

4.3 Budgetary

The Contracting Parties adopted Interim Financial Rules¹ stating at that time that these Rules shall be in place for a three year period (September 2000 – August 2003). Furthermore, it was agreed that the budget shall be financed on the basis of equal annual contributions by the Contracting Parties. In addition, it was decided that the Government of Turkey will cover 40% of the total costs of establishing and operating expenses of the BSC PS. The original plan was for the Contracting Parties to establish a Black Sea Environmental Fund, as the primary source of financing the implementation of the Black Sea Convention. The Interim Financial Rules should then be revised when the fund had been established. The Fund was not created and the Interim Financial Rules are still in place.

One budgetary issue is the compliance with rules and regulations established and adopted by the BSC. For example, the Interim Financial Rules state that 'The Commission will adopt the budget at least 6 months before the year it is meant for' (Rule 2). The budget has often adopted not in advance but actually after the start of the year for which it is valid.

The financial accounts of the BSC PS are being audited by officials from the CPs and appointed by the relevant BSC Chairman. So far two audit reports have been completed covering the period from the start of the operation of the BSC PS September 1, 2000

¹ Interim Financial Rules Governing the Program of Actions Undertaken within the Framework of the Convention on the Protection of the Black Sea Against Pollution.

until August 31, 2003 and the other audit report covers the financial year 2003/2004. Both audit reports carried out concluded that the financial statements were free of material errors and omissions.

Except for the additional contribution of Turkey during the first three years of the operation of the BSC PS, all six Contracting Parties were required to pay the same contribution to finance the budget. Since the adoption of the first budget this amount has not been revised. Other international organisations, such as ICPDR, HELCOM and OSPAR, have agreed to different methods for the allocation of contributions.

The equal contribution option was adopted by the BSC with the provision that within the first year, the Contracting Parties would review and possibly revise the contributions. Since the beginning there have been major problems with contribution payments. Countries, such as the Russian Federation and Ukraine, paid their contributions irregularly in the past. During the period of the review Georgia made its first contribution covering a two year period and committed to making double contributions annually to bring it up to date

The evaluation of the budget circumstances of the BSC PS must focus on the context of the staffing situation and requirements of the Secretariat as personnel costs constitute the largest share of the BSC PS expenditures Personnel costs (wages, etc.) amounting to around 49% of total expenditure followed by meeting and publication costs (34%) and operational costs (17%) for the financial year 2005/2006. This breakdown is similar to other regional seas programmes.

The BSERP supports the BSC and its Permanent Secretariat as well as the work of the different AGs as one of the basic principles of the BSERP is to strengthen the role of the Black Sea Commission. Therefore it is not surprising that there obvious overlaps exist in the two work programmes. However a consolidated picture with regard to all financial costs, of all activities carried out on behalf of the BSC by the BSERP has never been prepared to the knowledge of the Review Team.

The Review Team believes that the lack of development of a complete, consolidated and realistic financial management overview of activities carried out under the Black Sea Convention on behalf of the BSC is an obstacle for the future of the BSC. This finding must be seen in the context that the current BSERP work programme foresees a financial contribution of 200,000 USD to facilitate implementation of the Black Sea Strategic Action Plan (BS SAP).?] This is very significant in view of the fact that the BSERP will terminate at the end of 2007 and at that time the Black Sea Commission will either have to fund the 200,000 USD from other sources or reduce the activities. The accurate compilation and comparison of financial outlays and activities to be carried out under the Bucharest Convention and other international obligations is essential for the future work of the BSC as it represents the actual funding required. In the absence of a complete financial overview the BSC heavily relies on funds provided by third parties, such as the European Commission and in particular GEF, during the implementation of the work programme.

5. Recommendations

This section contains the recommendations of the Institutional Review Team to strengthen the Black Sea Commission. Although the presentation of the existing situation was conducted by legal, management and administration and budgetary components the recommendations integrate the three components.

5.1 Assumptions

There were a number of guiding assumptions which were used by the Review Team to develop the recommendations. The assumptions are as follows:

- Improve the implementation of the Convention and its subsidiary instruments
- Move forward from the current situation
- More active Commission
- Focus on Information and Policy [+ elements of Monitoring of Implementation]
- More resources
- Process of implementation of change over time

It was clear from the interviews that there is a need to improve the implementation of the Convention and that there is broad support for improvement. Interviews with Commissioners confirmed that there is a willingness to improve. However, it would be better to move from the existing situation rather than attempting to create a "theoretically ideal" model would have no chance of being implemented. The Commission and the individual Commissioners should play a more active role in the Commission was also a key assumption. The focus in the shorter term should be on information and policy and addressing emerging issues such as the fact that three countries are in the process of joining the European Union. But the Commission should also begin to consider adding elements of monitoring of compliance. With respect to resources the assumption is that human and financial resources will have to be increased as part of the process. Finally, the appropriate response to the Institutional Review should include a number of steps, some of which may be taken immediately with others, more substantial, to be taken over time. The Institutional Review provides the Commission with observations and recommendations to allow them to take the steps necessary within their power to meet the objective of better implementation of the Black Sea Convention. However, it is also clear that the Commission will require the cooperation of all stakeholders to meet this objective.

5.2 Immediate Actions

The Review Team suggested three areas for immediate action: streamlining, applying the rules and focussing on outputs.

5.2.1 Streamlining

There are several areas where the operations of the Black Sea Commission could benefit from streamlining. For example the annual work plan could be much shorter with clear objectives and outcomes focussing on prioritized activities. Clearer definition of responsibilities, timetable and adequate resources are also needed. During the course of the Institutional Review the work plan was already revised to include some of the recommended measures, for example the clearer identification of the lead agency for each activity and inclusion of a time frame and milestones for implementing individual activities.

5.2.2 Apply the rules

There is an extensive set of interim rules and procedures which have been established for Commission and Secretariat operations. Many of the rules are not regularly followed and some of the rules need to be reviewed, to account for changing circumstances and assumptions. An example can be found in the area of the Commission approval of the budget. The rules establish specific requirements for the budget to be approved in advance of the start of the budget year. However, the Commission has fallen into a pattern of reviewing and approving the budget as well as the work plan during the year for which is valid. During the period of the Institutional Review the Commission initiated some improvements in this area particularly with respect to the development of the agendas for meetings.

5.2.3 Focus on outputs

It is important for the Black Sea Commission to focus on outputs as a method of measuring progress and also to allow the Commission to show progress in meeting the requirements of implementation of the Convention and Protocols. The output focus should include the reporting process both internally and in the public information disseminated by the Commission. The use of outputs for internal verification of progress will allow the Commission to better allocate resources and set priorities for more efficient operation. Information dissemination focussing on outputs will allow stakeholders including government officials, NGO's, the donor community and the general public to better understand the progress being made by the Commission to implement the Convention.

5.3 Short term actions

This section outlines actions which are recommended for implementation in the short term to strengthen the Commission. The short term recommendations were based upon the following assumptions:

- They could be implemented within the existing legal framework
- They would strengthen the emphasis on outputs
- They would require the revision of existing internal documents & structure
- A modest staffing increases would be required
- A modest budget increase would be required

5.3.1 The Commission

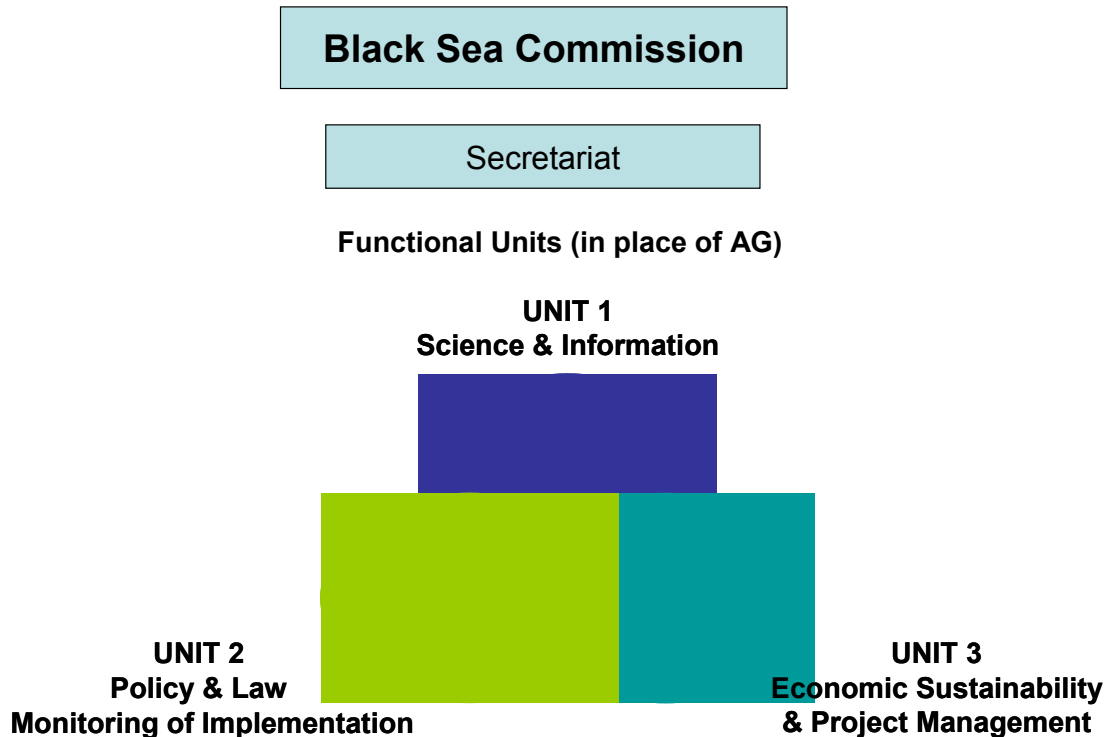
The Review Team recommends that the Commission and its individual members become more active in promoting the objectives and improving the visibility and credibility of the Black Sea Commission. In this regard the Review Team would recommend that continuity be improved by lengthening the period that the Chair of the Commission is performing the duties of the Chair. The one year term of office is established in the Convention. Therefore it is recommended that a "Troika" approach be adopted so that the current Chairman has the benefit of the experience and insights of the previous Chairman. The incoming Chairman as the third member would be familiar with the situation as he assumes office.

In addition, it is proposed by the Review Team, that the Chairman raise the profile of the Commission by making visits to other countries during his chairmanship acting as an 'ambassador' of the Commission. This would raise the profile of the Commission and improve communication between the Commission and the Contracting Parties as is the case in other international organizations such as the ICPDR.

At the same time it is recommended that the individual Commissioner become more active in communication the objectives and programmes of the Commission in their own countries. Increased awareness and participation by other ministries would benefit the Commission in implementing the Convention.

5.3.2 The Structure

The proposed revised structure is presented in the graphic below:



The activities of the Commission would be reorganized into three functional units; Information and Science, Policy and Law, and Economic Stability and Project Management. The relevant references to the Convention are provided for each of the three units in the following description:

Unit 1 Science and Information {Art. XVIII (4 & 5), Art. XV (2)} unit should focus on:

- Specification of data & format
- Collation of information
- Information quality control
- Information analysis: problems & causes
- Presentation & dissemination (internal and external)

Unit 2 Policy and Law {Art. XVIII (2, 3 & 5), Art. XVI (2), Art. XV (3)} should focus on:

- Priority issues: problem responses
- Policy options
- Specific measures & recommendations - rules, standards, practices & procedures
- Monitoring of implementation

This policy related function which is clearly articulated in the Convention is the one which most stakeholders would view as the highest priority for strengthening the implementation of the Convention.

Unit 3 Economic Sustainability and Project Management{Art. XVIII (6)} would be responsible for the following:

- Project management
- Fund raising
- External relations

Each country would designate one person each half time to work with the first two units. These individuals who would have the Black Sea Commission activities specifically in their job descriptions would be in kind contributions of the countries. These individuals would be the key working link between the country and the Commission Secretariat with respect to two-way flow of information and the identification of the appropriate country experts to participate or be consulted with respect to specific issues. It is anticipated that each county would appoint one individual with a science background and a second familiar with policy development to these positions. Unit 3 would only be staffed by one full-time employee at the Secretariat.

Under the revised structure the Review Team recommends that there be a merger or combing of the activities of the existing Advisory Groups and that steps be taken to reduce the number of members as appropriate. The Contracting Parties then may choose to provide in kind support to the new structure in the form of an activity centre or similar body. However, it is not anticipated that each Advisory Group would have a corresponding activity centre.

It is recommended that the revised structure be implemented at the Commission meeting in the latter half of 2006. The internal rules and procedures could also be revised and streamlined in parallel with the structural changes. In addition, the Commission should commit themselves to a doubling of the budget by the 2008/2009 financial year.

5.3.3 The Secretariat

In order to implement the new structure the Review Team recommends a modest increase in the number of staff appointed. At the time of the review there were three persons appointed in the roles established in the rules of procedure, the Executive Director, Pollution Control and Abatement Officer, Accountant and Secretary/Typist (combined position). In addition there was a person responsible for informatics and a second for biodiversity who were funded by external sources.

The revised structure should be supported by the Executive Director, one officer with a scientific background, a second with policy and law experience and the third with economic and project management experience. These three would be in addition to any staff provided through external resources.

5.4. Longer Term

In the longer term there should be changes made to both the legal framework and the institutional structure. These changes should reflect the modern tendencies in environmental law-making to take into account conditions which have changed since the original Convention was adopted. A consistent much higher level of resources will be necessary.

The legal and institutional framework will need to be revised to allow for the full implementation of an effective compliance verification mechanism. For example, two countries are in the final stages of the EU accession process. It is the custom of the EU to become a party to all treaties of which Member States are parties. In this case should that procedure be followed it will require amendment of the Convention. Thus, the Convention can be updated to bring it into line with treaties with similar objectives. Consistently more significant levels of financing and larger staff resources will be necessary to meet much higher requirements which may result from the legal revision of the Convention.