

Public Private Partnerships: A Tool to Evade or to Live-up to Commitment?

by Franz Xavier Perrez^{*}

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PRACTICAL LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS

A Global Administrative Law Perspective on Public/Private Partnerships, Accountability and Human Rights

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^{*} Dr. Franz Xavier Perrez, head of section in the International Affairs Division of Switzerland's Federal Office for the Environment; J.S.D. 1998 (NYU School of Law); LL.M. 1996 (NYU School of Law); additional studies at University of Bern School of Law and Université de Paris II. Dr. Perrez teaches international environmental law at the University of Bern School of Law. The ideas expressed in this articles are those of the authors and do not reflect the view of the Swiss Government.

I. Introduction:

Public Private Partnerships (PPPs) are en vogue: they are promoted as successful and flexible instruments to enable rapid and effective concrete action on the ground. However, more critical view of PPP would argue that partnerships are primarily a way to evade responsibility and sustainable commitment and that they raise important political and institutional concerns.

This paper will build on two concrete examples of PPP in the field of chemicals and waste management. It will, after a general discussion of the PPP concept, its advantages and its legal and political challenges (Part II), compare PPPs that are launched on a purely voluntary basis without a binding institutional context with PPPs that are developed within a legally binding framework (Part III). It will conclude that PPPs can be both, an instrument to avoid firm commitment and an instrument to live-up to commitments, and it will argue that the best approach to ensure that they are not an instrument to evade but to live-up to responsibility and commitment, PPPs should be embedded into a firm political and institutional framework (Part IV).

While this thought starter is focusing on the experience in the environmental context, it seems to be that its conclusions are also applicable for other policy areas.

II. The Concept of Public Private Partnerships:

So far, no clear definition of PPPs exists. Generally, PPPs are understood as formalized cooperation between public and private entities, where one or several government and one or several private actors form a non-hierarchical “partnership” or “joint venture” with the objective to implement a specific policy function.¹ Typically, such partnerships are formed to provide a service or implement an activity which would normally be seen as a governmental task. Thereby, the form of a PPP is chosen because it is thought to be more flexible, more efficient and allowing for involvement of actors that are closer to the “reality on the ground.” PPPs are thus seen as “increasing the effectiveness through their problem-solving capacity and legitimacy through democratic accountability of international governance in terms of democratic participation and accountability.”²

PPP in the narrow sense typically relate to the provision of key public services such as garbage collection, education or water provision.³ While these services are key functions of the government, the government decides to provide them through private businesses because these are felt to be able to provide the services more efficiently than the government. PPPs in the broader sense relate to situations where governments decide to cooperate with private actors in order to bring together the specific expertise of each side.⁴ The goal is not simply to

¹ See generally: Tanja A. Börzel and Thomas Risse, *Public-Private Partnerships: Effective and Legitimate Tools of International Governance?*, in: Edgar Grande and Louis W. Pauly (eds), *Complex Sovereignty: Reconstituting Political Authority in the Twenty-First Century* (Toronto: Toronto University Press 2005), at 195; Corinne Karlaganis, *Fair Trade Labels: A Case Study of the Max Havelaar Label in Switzerland* (Lizentiatsarbeit 2008, on file with the author), at 46-49; Stephen H. Linder and Pauline Vaillancourt Rosenau, *Mapping the Terrain of the Public-Private Policy Partnership*, in Pauline Vaillancourt Rosenau (ed.) *Public-Private Policy Partnerships* (Cambridge MA: MIT Press 2000), 5.

² Karlaganis, *supra* note 1, at 47, referring to Börzel and Risse, *supra* note 1, at 195.

³ Urs Zollinger, *Public Private Partnerships: Das neue Zauberwort?*, Presentation at the Europainstitut of the University of Basel, 19. Mai 2005, available with the author.

⁴ *Id.*

provide a service in a more efficient way through private actors but to pool the expertise – and the resources – of government and private actors and to reach a policy goal through joint activity. These PPPs can also be referred to as “Multi-Stakeholder Partnerships”. They are especially relevant in the international context where private entities often provide specific local or technical expertise. PPPs in the broader sense may also receive funding from both the private and the public partners involved.

PPPs – especially PPPs in the narrow sense – can be seen as a “privatization” of public responsibilities.⁵ Reasons for this “privatization” include the perception that private actors may act more efficient and can take decisions and act more flexible and more rapidly. This enhanced efficiency and flexibility can be explained by the fact that private actors can pay lower salaries, do not have to respect the same labour standards⁶ as governments, and are not bound by the principles and rules of the “administrative law” which generally control government activities. Other reasons for choosing a partnership approach – especially in the case of PPPs in the broader sense – include the fact that not only the government, but also private actors are seen to have certain responsibilities and that by pooling responsibility and expertise and by acting together, a better result can be achieved in a more efficient manner. The partnership approach can thus be seen as an acknowledgement that sustainable development cannot be achieved by governments by their own but needs the involvement of all main stakeholders concerned.⁷

While PPPs have a long-standing tradition at the national level at least in industrialized countries,⁸ PPPs have entered the international sphere only recently.⁹ In 2002, the World Summit on Sustainable Development (WSSD) has created a strong momentum for PPPs in environmental policy.¹⁰ The WSSD has offered a formal framework to launch PPPs to implement Agenda 21 and the Johannesburg Plan of Implementation, and PPPs are seen as one of the major outcomes of the World Summit on Sustainable Development.¹¹ In difference to the Johannesburg Plan of Implementation which was negotiated and formally adopted by governments at the WSSD, Type II Partnerships were not negotiated but simply announced by the partners and were of purely voluntary nature.¹² They were welcome as “commitments and action-oriented coalitions focused on deliverables” that “would contribute in translating political commitments into action”.¹³

⁵ See e.g. Uli Piest, *A Preliminary Analysis of the Inter-linkages within WSSD “Type II” Partnerships*, in 17/1 WORK IN PROGRESS 25 (2003), at 25 with further references.

⁶ However, as minimal labor security standards are often prescribed by law, these standards should in principle not be lower in industry than in government.

⁷ Stakeholder Forum for Our Common Future, *Comments on the proposed framework of outcomes documents for Earth Summit 2002* (2002), at 2, available at <http://www.iisd.ca/wssd/download%20files/Comments_Outcome_Framework.doc> [last visited 5.3.2009].

⁸ Karlaganis, *supra* note 1, at 46.

⁹ Karlaganis, *supra* note 1, at 46-47.

¹⁰ See International Institute for Sustainable Development, *Linkages* (2002), available at <<http://www.iisd.ca/wssd/partnerships.html>> [last visited 05.03.2009]; Najam, A., M. Papa, and N. Taiyab, *Global Environmental Governance: A Reform Agenda*, (Winnipeg: International Institute for Sustainable Development, 2006), at 50; Lee Kimball, Franz Xavier Perrez, and Jacob Werksman, *The Results of the World Summit on Sustainable Development: Targets, Institutions, and Trade Implications*, in 13 YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 3 (2002), at 16; Piest, *supra* note 5, at 25.

¹¹ Piest, *supra* note 5, at 25.

¹² See the Vice-Chairs’ Summary and the Guiding Principles, available at <http://www.johannesburgsummit.org/html/sustainable_dev/type2_part.html>.

¹³ Franz Xavier Perrez, *The World Summit on Sustainable Development: Environment, Precaution and Trade - A Potential for Success and/or Failure*, 12 REVIEW OF EUROPEAN & INTERNATIONAL ENVIRONMENTAL LAW (RECIEL) 12, at 13 (2003). See also: Explanatory note by the Chairman of the Preparatory Committee, available at: <<http://www.iisd.ca/wssd/partnerships.html>>.

However, while PPPs offer important benefits such as flexibility, attracting additional support from non-traditional sources, being able to be targeted to very specific circumstances, and offering the opportunity to engage the actors that have specific expertise needed, they trigger at the same time political, legal/institutional and democracy concerns. The political concerns relate to the fact that PPPs tend to be “a possibility to deliver some results without really committing governments to hard action.”¹⁴ Governments, in response to requests for concrete commitment and concrete action, often prefer to call for voluntary and flexible partnership approaches instead of committing themselves formally through multilaterally negotiated obligations. Thereby, they argue that government resources and expertise are limited, that there is a need to involve “innovative funding alternatives”, and that private actors, especially industry, should also live up to their responsibility. Thus, the WSSD Type II outcomes were heavily criticized as an attempt by governments to evade responsibility and real commitment:¹⁵ they were perceived as “a vehicle to avoid any firm commitment or deadlines to fund global sustainable development efforts and (...) a move into voluntary processes that lack rules for responsibilities and accountability”,¹⁶ and they were criticized as a “diffusion of responsibility” due to “lack of political will and the lack of resources”¹⁷ and an effort to “undermining multilateralism by shifting the focus to voluntary partnerships”.¹⁸ This negative perception of PPPs was confirmed by the fact that the same governments that gave most weight to the voluntary type II outcomes were the same that rejected the development of a clear institutional framework and modalities for partnerships, including the formulation of targets, timetables, monitoring arrangements, reporting obligations, coordination and implementation mechanisms, and arrangements for predictable funding.¹⁹ Moreover, some of the PPPs that have been proudly announced at the WSSD turned out to be financed not by further but re-addressed money.²⁰ Indeed, given the lack of clear and verifiable criteria for PPPs and the lack of monitoring and control mechanism, “[t]here is (...) no guarantee that the partnerships bring additional financial gain to developing countries. Instead, old projects are likely to be repackaged.”²¹ Since the WSSD, many developing countries have expressed their dissatisfaction about the type II outcome of the WSSD and they have claimed that the PPPs that have been solemnly announced as important success of the WSSD have in fact had no real impact on the ground.²²

¹⁴ Heinrich Böll Foundation, *What are the Outcomes of the World Summit?* (2003), available at <<http://www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/guide/wssdoutcome.htm>> [last visited 5.3.2009].

¹⁵ See e.g.: Centre for Science and Environment (CSE), *WSSD Turned Into Partnership Market* (Press Release 31.8.2002), available at http://www.cseindia.org/html/eyou/geg/press_20020831_1.htm [last visited: 8.3.2009]; Piest, supra note 5, at 25; Najam, A., M. Papa, and N. Taiyab, *Global Environmental Governance: A Reform Agenda*, (Winnipeg: International Institute for Sustainable Development, 2006) [supra note 10], at 67; Stakeholder Forum, supra note 7.

¹⁶ Piest, supra note 5, at 25, with further references.

¹⁷ Stakeholder Forum, supra note 7, at 2.

¹⁸ Centre for Science and Environment, supra note 15, stressing that “[u]nwilling to make any firm commitments or deadlines to fund global sustainable development efforts at the WSSD, the US first proposed the idea of voluntary partnerships in the preparatory process of the WSSD. Despite widespread protests that the WSSD was meant to be a venue for multilateral commitments to strengthen global cooperation and not bilateral partnerships, the idea of Type II agreements -- partnerships between governments, regional groups, local authorities, non-governmental actors, international institutions or private sector actors -- were accepted by governments with minimal discussion.”

¹⁹ Centre for Science and Environment, supra note 15; Perrez, supra note 13, at 13, with further references.

²⁰ Piest, supra note 5, at 26.

²¹ Centre for Science and Environment, supra note 15.

²² Najam, A., M. Papa, and N. Taiyab, *Global Environmental Governance: A Reform Agenda*, (Winnipeg: International Institute for Sustainable Development, 2006) [supra note 10], at 65

The legal/institutional concerns relate not only to the fact that by acting through private actors, governments can circumvent rules and principles established by administrative law for standard government practice. Legal/institutional concerns relate also to the typical lack of a clear and neutral institutional framework to oversee and coordinate the implementation of the partnerships; the lack of stringent modalities for formulating partnerships such as criteria to make sure that they are not simply a repackaging of already existing activities; and the absence of measurable targets, timetables, indicators for progress, and monitoring arrangements and reporting obligations. And, as PPPs are purely voluntary measures, they depend on the current political priorities of the donors and they normally lack a long-term commitment and arrangements for predictable funding and a sustainable financial basis. Being voluntary allows also the donors to apply during the selection, development and design of partnerships to use criteria that do not have a link to the objective of the PPP.²³ Finally, being ad hoc, focused on very specific cases, and lacking broader coordination, partnership approaches tend to support activities on only some areas of the word and leave out others, having thus only a limited outreach. And while uncoordinated voluntary approaches risk that parallel and duplicative initiatives are launched, it will be more difficult for some countries to receive support through a voluntary partnership approach than through a multilateral framework where the discretion of donor's to earmark its support is more limited. The voluntary ad hoc character raises thus concerns both of comprehensiveness and fairness.

Finally, these political and institutional concerns lead also to concerns of democratic accountability and legitimacy: While some may argue that stronger stake-holder involvement could address a perceived "democratic deficit" of international policy, others would argue just the opposite.²⁴ The close cooperation and "networking" between state-actors and a selected number of non-state actors in PPPs that are initiated and implemented without a strong political accountability and oversight may bear the risk of circumventing established democratic control mechanism.

III. Concrete Examples of Public Private Partnerships in the Context of Chemicals and Waste Management:

PPPs can provide for significant benefits such as efficiency, flexibility and the possibility to directly engage important stakeholders with specific expertise and working in the direct environment of the targeted problem. However, they also pose important political and institutional challenges, namely they tend to allow countries to evade firm and sustainable political commitment, they typically lack an institutional framework to oversee and assess implementation from a neutral perspective, and they cannot ensure a comprehensive approach that covers all geographic areas. This section will discuss two partnership initiatives in the area of environmental policy: a project to promote sustainable artisanal mining in Mongolia, a typical voluntary partnership that involves public and private actors, and the Mobile Phone Partnership Initiative, a public private partnership initiative that has been launched within the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

²³ E.g., when Switzerland was discussing the possibility to launch a partnership initiative on water in the lead-up to the WSSD, some of the other potential donors requested that the countries in which the partnership should be implemented would have to be on the right side in the "war against terrorism".

²⁴ See on this generally Franz Xavier Perrez, *How to Get Beyond the Zero-Sum Game between State and Non-State Actors in International Environmental Governance*, in: Consilience: The Journal of Sustainable Development 2 (No II, Spring 2009), Section 3, with further references (available at <http://consiliencejournal.readux.org/wp-content/uploads/2009/03/perrez-feb221.pdf>, last visited 26.05.2009).

III.1 Voluntary Partnership to Promote Sustainable Artisanal Mining in Mongolia

Mercury is a potent neurotoxin that interferes with brain functions and the nervous system. It is a global pollutant that is persistent, bio-accumulates and is transported globally.²⁵ Mercury accumulates in the food chain and is transported over long distances in water, the air and in products. Artisanal and small scale gold mining (ASM) is the second biggest anthropogenic source of mercury emissions responsible for about 18% of the global anthropogenic mercury emissions.²⁶

Some 10-15 million people in 55 countries are engaged in ASM, producing 20-30% of the world's gold.²⁷ Most artisanal/small scale gold miners are marginalised, live on the fringes of society and subsist below the poverty line. ASM has little in common with the modern mining industry. Typically ASM lacks legislation, is often half-legal or even considered as illegal. Environmental, labour or safety standards are missing and artisanal/small scale gold miners are deprived from access to social services. The techniques for mining the gold differ little from those used in colonial times and accidents in the mines are therefore frequent. To recover the gold from the ore sludge, toxic mercury is predominantly used. Knowledge concerning the toxicology and harmful effects of the unprotected use of mercury in such mining activities is very low and alternatives or safer methods – although available – are absent. The miners are therefore not only risking their health, but they are also destroying the natural ecosystem.

Partnership initiatives are considered an effective approach towards improving the situation in the ASM-sector. By involving local private actors, private actors with specific expertise and the relevant local, regional or national government, public private partnerships can be flexibly and efficiently targeted to the concrete situation of a specific place. The Swiss Agency for Development and Cooperation (SDC) is engaged in several partnership initiatives addressing the challenges posed by ASM and can thus combine through this approach its broader expertise with the specific local knowledge. In Mongolia, where ASM is a new phenomenon which is gaining importance due to the difficult economic situation, SDC has launched an eight year project "Support to Artisanal Mining in Mongolia" (SAM). The project tries to address the social and environmental challenges posed by ASM through legalization, institutionalization and introducing environmentally sounder technology.²⁸ The SDC project partners are the Ministry of Industry & Trade, the Ministry of Social Welfare & Labour, the Ministry of Nature & Environment, the Mining Rescue Services, Local governments, National NGOs, including the Artisanal and Small Scale Miner's Association, Research institutions and other donors in Mongolia. In order to formalize ASM, the project will assist the Government of Mongolia in developing an ASM law which reflects the concerns of all stakeholders such as the Mineral Resources and Petroleum Authority (MRPAM), the

²⁵ UNEP, Global Mercury Assessment (2002), at iii; available at <http://www.chem.unep.ch/mercury/Report/GMA-report-TOC.htm> [last visited 7.3.2009]

²⁶ UNEP, The Global Mercury Assessment: Sources, Emissions and Transport (December 2008), at 2; available at http://www.chem.unep.ch/mercury/Atmospheric_Emissions/UNEP%20SUMMARY%20REPORT%20-%20final%20for%20WEB%20Dec%202008.pdf [last visited 7.3.2009].

²⁷ UNEP, *supra* not 26 [Hg assessment emission...], at 13.

²⁸ For a description of this project, see generally:

http://www.sdc.mn/en/Home/Natural_Resource_Management/Sustainable_Artisanal_Mining; and <http://www.sam.mn> [last visited 8.3.2009].

environmental inspection agencies, the local administration, the artisanal miners, the formal mining industry, the cadastre office, gold buyers and service providers. At the same time, the institutional structures for natural resources management should be strengthened and technical know-how about more efficient and environmentally friendlier practices is to be transmitted to the artisanal miners.

The experience of Switzerland with ASM partnerships such as the one in Mongolia has shown that the partnership initiatives can effectively address local challenges and can have important effects on mercury reduction and social development.²⁹ However, the Swiss experience has also shown that without a broader supportive framework, it is difficult to ensure that mercury is recognized as a priority concern over a mid- or long-term timeframe. The positive effects risk to remain isolated and to fail to be sustainable at a regional, national, regional or global level.³⁰ And, as such partnership approaches are voluntary approaches within a limited time-frame, they are not necessarily able to ensure support and change in a long-term perspective.³¹ This is especially the case in a sector such as ASM where the miners are socially and geographically isolated and not educated and where new environmentally sounder practices may not be maintained if awareness raising activities and training ends. Thus, while voluntary partnerships in the ASM sector do improve environmental and health conditions in the short-term, the sustainability of such initiatives cannot be guaranteed if these initiatives remain purely voluntary and ad hoc. Finally, as ASM practices are spread into remote regions all over the world, an isolated PPP to promote more sustainable ASM practices in Mongolia will not be able to address effectively the global challenges posed by ASM. This would need a coordinating framework ensuring that similar PPPs are launched in all regions.

III.2 Basel Convention Mobile Phones Partnership Initiative

Mobile phones, like any electronic device, include valuable materials such as gold and platinum but may also include several hazardous substances such as mercury, lead and cadmium.³² Once mobile phones have reached their end-of-life, they become waste and are disposed in landfills, incinerated or recycled – all these activities can have significant negative impacts on the environment and human health when not done in an environmentally sound manner.³³ Hazardous substances can migrate from landfills into the groundwater and into lakes, streams, or wells and they can migrate from landfills into the food chain. Moreover, in some regions, especially in poor regions, people, including small children, live and work on landfills and look for valuable materials. Incineration, particularly if informal and uncontrolled, can lead to emissions of hazardous substances into the air. And, recycling may

²⁹ See generally: Swiss Federal Office for the Environment, *Experience of Switzerland with mercury Partnerships* (Conference Room Paper for the Ad hoc Open-ended Working Group on Mercury of 13 November 2007), UNEP Document UNEP(DTIE)/Hg/OWEG.2/CRP.6, at 4.

³⁰ *Id.*

³¹ *Id.*; see also: UNEP, Report of the Ad Hoc Open-ended Working Group on Mercury on the work of its second meeting (16.10.2008), at 18, § 17(b), available at <<http://www.chem.unep.ch/mercury/OEWG2/Documents.htm>> [last visited 9.3.2009], indicating that experience with other voluntary measures shows that they fail to attract sustained and adequate financial resources.

³² See generally: Basel Convention, Guidance document on the environmentally sound management of used and end-of-life mobile phones (2006), at 8-9 and 39-40; available at <http://www.basel.int/industry/mppi/MPPI%20Guidance%20Document.doc#_Toc147297679> [last visited 9.3.2009].

³³ *Id.*, 41-43.

happen in a manner that is environmentally unsound and exposes the workers and the environment to harmful substances.

The use of mobile phones has grown exponentially over the last years. Large quantities of used and secondhand mobile phones are exported from industrialized countries into developing countries for re-use or recycling.³⁴ With no environmentally sound waste management or recycling infrastructure for electronics in place, the disposal or treatment of used mobile phones in developing countries leads to releases of toxic substances from the mobile phones and their batteries into the environment and to the endangering of the human health.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal aims to protect human health and the environment through prevention and minimization of hazardous waste, the environmentally sound management of hazardous waste and the reduction in transboundary movement of hazardous waste.³⁵ Thereby, the Basel Convention defines waste as “substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law”.³⁶ Thus, there is no international consensus whether old and used mobile phones when exported to developing countries often do fall or do not fall within provisions of the Basel Convention especially in the case of used mobile phones exported for repair. Nevertheless, the huge and even increasing flow of used electronic devices such as mobile phones from developed into developing countries creates significant challenges. Therefore, the Basel Declaration on Environmentally Sound Management,³⁷ adopted in 1999, and the Strategic Plan of the Convention,³⁸ adopted in 2002, called for the development of public private partnerships between governments, industries and other non-governmental organizations to ensure practical application of environmentally sound management.

Based on the initiative of Switzerland, the conference of the Parties of the Basel Convention decided in 2002 to establish a Mobile Phone Partnership Initiative (MPPI).³⁹ The world’s most important mobile phone manufacturers – Alcatel, LG, Matsushita (Panasonic), Mitsubishi, Motorola, NEC, Nokia, Philips, Samsung, Sharp Telecommunications Europe, Siemens and Sony Ericsson – and three telecom operators – Bell Canada, France Telecom/Orange and Vodafone – committed to participate in the MPPI. The representatives of these manufacturers and telecom operators participated in the work of the Mobile Phone Working group to develop a set of guidelines and guidance manuals dealing with the environmentally sound management of used and end-of-life mobile phones;⁴⁰ the transboundary movement of collected mobile phones;⁴¹ the awareness raising on design

³⁴ See e.g.: Osibanjo, Oladele, and Nnorom, Innocent Chidi, Material flows of mobile phones and accessories in Nigeria: Environmental implications and sound end-of-life management options, 28 Environmental Impact Assessment Review 198 (2008).

³⁵ See generally Katharina Kummer Peiry, *International Chemicals and Waste Management*, in: M. Fitzmaurice and D. Ong (eds.), RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW (2009).

³⁶ Basel Convention Art. 2.1, available at <http://www.basel.int/text/documents.html> [last visited 9.3.2009].

³⁷ Available at <www.basel.int/meetings/cop/cop5/ministerfinal.htm> [last visited 9.3.2009].

³⁸ Strategic Plan for the implementation of the Basel Convention (to 2010), available at <<http://www.basel.int/meetings/cop/cop6/StPlan.pdf>> [last visited 9.3.2009].

³⁹ See Decision VI/31 of the Conference of Parties to the Basel Convention, available at <<http://www.basel.int/meetings/cop/cop6/english/Report40e.pdf#vi31>> [last visited 9.3.2009]; Basel Convention, *Information Brief on the Mobile Phone Partnership Initiative* (2007), available at <<http://www.basel.int/industry/mppi/overview.doc>> [last visited 6.3.09].

⁴⁰ Available at <<http://www.basel.int/industry/mppi/MPPI%20Guidance%20Document.doc>>.

⁴¹ Available at <<http://www.basel.int/industry/mppiwp/guid-info/guidTBM.pdf>>.

considerations;⁴² the material recovery and recycling of end-of-life mobile phones;⁴³ the collection of used mobile phones;⁴⁴ and the refurbishment of used mobile phones.⁴⁵ These guidelines and guidance manuals were adopted by the Conference of the Parties of the Basel Convention and provide together a comprehensive set of concrete guidance how to deal with used and end-of-life mobile phones in a sustainable manner. These guidances should ensure that only used mobile phones that still have a certain life-span will be traded to developing countries and that end-of-life mobile phones are not transported to developing countries where they risk to be disposed, incinerated or recycled in an environmentally unsound manner.

Concretely, the Basel Convention Mobile Phone Partnership was able to reach three targets: technically, it developed five guidelines and one overall guidance document which was adopted by the Conference of the Parties to the Basel Convention; institutionally, it demonstrated that PPPs can be a powerful and effective tool also within the framework of a Convention not only to implement specific activities but also to develop policies; and politically, it was an important incentive to bring the emerging problems of electronic scrap on the international – and in several countries also the national – political environment agenda. After adoption of these guidance documents, the next phase of the MPPI will focus on the dissemination of the guidelines, the training of government officials, and the launching of pilot projects on collection and treatment schemes in developing countries and countries with economies in transition.⁴⁶

The experience of developing the guidance material in close cooperation with industry was a very productive experience: the direct involvement of the main mobile phone manufacturers and of key telecom operators ensured that it is supported by key players, that the guidance material is building on the concrete experience of some of the most important relevant actors, and that the PPP will globally cover the use and re-use of mobile phones. Moving to the next phase in which the effectiveness of the guidance material will be tested in pilot projects will also show how committed industry is to undertake real changes in a voluntary guiding framework. Thereby, the fact that the MPPI is embedded in a strong overarching policy framework will allow to follow-up on implementation, assess effectiveness, amend and strengthen the guidance documents and to move, if necessary, towards a more compelling framework.

IV. Conclusions: Public Private Partnerships Within a Firm Political and Institutional Framework:

In the international level, the use of PPPs is a relatively new phenomenon. Thus, experience with PPPs is still limited both for governments and private actors. PPPs are commended for enabling flexible, targeted, efficient and effective policy implementation. By involving non-state actors, they engage additional expertise and resources. This can increase effectivity, ownership and legitimacy. At the same time, they still trigger political, institutional and democracy concerns. And while PPPs are praise for attracting new and innovative funding support, they are in most of the cases not able to ensure sustainable financing.

⁴² Available at <<http://www.basel.int/industry/mppiwp/guid-info/guiddesign.pdf>>.

⁴³ Available at <<http://www.basel.int/industry/mppiwp/guid-info/guidmaterial.pdf>>.

⁴⁴ Available at <<http://www.basel.int/industry/mppiwp/guid-info/guidcoll.pdf>>.

⁴⁵ Available at <<http://www.basel.int/industry/mppiwp/guid-info/guidrefurb.pdf>>.

⁴⁶ Basel Convention, *Information Brief*, supra note 39.

The experience with the two partnership approaches described in this paper shows that while PPPs do have the benefit of allowing for rapid concrete action on the ground, they benefit strongly from the presence of an overarching legally binding policy framework. Such overarching framework could be a general framework legislation or a specific political and institutional framework as the established e.g. by the Basel Convention. Thus, it seems that combining PPPs with a broader multilateral framework could help to address potential risks and shortcomings of purely voluntary initiatives:⁴⁷ Firstly, a broader framework could ensure that implementation is not isolated and ad hoc but part of a broader policy and comprehensive and global in its coverage. A broader coordinating institutional framework can thus assist to avoid parallelisms and duplications and to ensure that all countries can benefit from concrete PPPs-activities. Secondly, the existence of a binding framework helps to ensure that problems and activities to address these problems are seen as part of a broader commitment and thus would receive stronger support. A legally binding framework can also help to ensure the political, financial and institutional sustainability of partnership activities. Finally, a legally binding framework is able provide an adequate institutional for review, assessment and further development of concrete activities.

Thus, a legally binding approach can be seen as an ideal framework for flexible partnership approaches to promote and support implementation. Embedding PPPs in a broader commitment and institutionalized framework allows combining the flexible and dynamic character, the engagement of key stakeholders with their expertise, and the proximity to the concrete problems on the ground with the political, legal and institutional benefits of a broader, multilateral and legally binding framework. Thus, PPPS should not replace, but supplement political commitment and thus be seen as part of a strong framework that establishes this commitment in a legally binding manner.

⁴⁷ Swiss Federal Office for the Environment, *supra* note 29, at 4.