

SUBMISSION OF THE SOUTH CENTRE TO THE TRANSITION COMMITTEE TO DESIGN THE GREEN CLIMATE FUND

ON THE ISSUES OF WORKSTREAM 2 – GOVERNANCE AND INSTITUTIONAL ISSUES

The following is a Submission of the South Centre, an inter-governmental organization comprising developing countries, and an Observer organisation of the UNFCCC, to the Transition Committee to Design the Green Climate Fund. This Submission is on the issues relating to Workstream 2 of the Committee, and broadly follows the themes of the workstream provided by the Co-Facilitators. The Centre may wish to revise this Submission in due course. The Centre will also make Submissions on other workstreams.

1. Governance and institutional aspects of climate finance

Effective climate action requires adequate financial resources and effective governance of climate finance. Well-designed institutions can help to catalyze action within and between different sectors, support effective cooperation among public, private and non-profit actors, align the interests of donors and recipients and integrate actions at the local, regional and global levels.

Since climate change is among the great issues of our time, then the institutions designed to address it must be adequate to the task. They must enable global emissions to peak and decline soon, while enabling adaptation and advancing economic and social development.

Curbing warming and enabling effective action will require a mobilization on a scale not undertaken by the international community outside of wartime. The scale of finance that has to be mobilized, managed and applied considerably exceeds the level of finance traditionally managed by international institutions.

Effective governance of climate finance must be tailored to address the scale and specific characteristics of the problem or problems it is to address. It can build on experience with other sectors or issues. But it must ultimately be designed specifically in light of the peculiar character and complexity of challenge presented by climate change.

The establishment of the Green Climate Fund as decided in Cancun has generated great expectations that the global governance of climate change and the required financial mechanism will materialize. The Fund has been designated as an operating entity of the financial mechanism of the Convention under Article 11, with arrangements to be concluded between the Conference of the Parties and the Green Climate Fund to ensure that it is accountable to and functions under the guidance of the Conference of the Parties (Para 102 of Cancun decision).

The Transition Committee to design the Fund is mandated to propose how the Fund's relation to the COP will be arranged, as well as to propose the functions of the Secretariat and the Trustee and to propose methods to enhance complementarity between the Fund's activities and those of other funding mechanisms and institutions;

This submission comments on these issues of governance and institutional arrangements, drawing where appropriate from the experiences of other Funds, and makes some suggestions.

2. Relationship to Conference of Parties

The Climate Convention provides that the Financial Mechanism "shall function under the guidance of and be accountable to the Conference of the Parties". Accordingly, the COP "shall decide on its policies, programme priorities and eligibility criteria related to this Convention".

The GCF has been designated as an operating entity of the Financial Mechanism, with arrangements to be concluded between itself and the Conference of the Parties "to ensure that it is accountable to and functions under the guidance of the Conference of the Parties" (Para 102 of Cancun decision).

Developing countries have emphasized the importance of ensuring the mechanism and its operating entities function under the guidance of and remains accountable to the Conference of Parties. This stems in part from experience with the Global Environment Facility, which in the view of many developing countries has remained insufficiently accountable to the Parties.

In the case of the GEF, the Parties established the GEF as an operating entity of the financial mechanism, to be reviewed every four years. In practice, the GEF is accountable directly to the GEF Assembly, which is comprised of its member countries, and is only indirectly accountable to the Conference of the Parties to the UNFCCC. This has led to a range of protracted concerns regarding the role of the GEF and its accountability to the Conference of Parties.

As a result, the G77 and China called for the Fund to be established directly under the authority of the Conference of Parties.¹ They moreover affirmed that:

Any funding pledged outside of the UNFCCC shall not be regarded as the fulfilment of commitments by developed countries under Art. 4.3 of the Convention, and their commitments for measurable, reportable and verifiable means of implementation, that is, finance, technology and capacity-building, in terms of para 1.b (ii) of the Bali Action

¹ UNFCCC, *G77 and China Proposal: Financial Mechanism for Meeting Financial Commitments under the Convention*, Accra, Ghana: United Nations, August 2008. http://unfccc.int/files/kyoto_protocol/application/pdf/g77_china_financing_1.pdf

They have also stated that funding pledged outside of the UNFCCC shall not be regarded as the fulfilment of commitments by developed countries under Article 4.3 of the Convention, and their commitments for measurable, reportable and verifiable means of implementation, that is, finance, technology and capacity building, in terms of paragraph 1.b (ii) of the Bali Action Plan.

Plan.²

In this context, **the Adaptation Fund provides a model** as it was established with the consensus of all Kyoto Parties directly through a decision of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.³ Decision 1/CMP.3 establishes an operating entity that is “fully accountable” to the CMP. It states that the CMP:

Decides that the operating entity of the Adaptation Fund shall be the Adaptation Fund Board, serviced by a secretariat and a trustee;

Decides that the Adaptation Fund Board shall be established to supervise and manage the Adaptation Fund, under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, and shall be fully accountable to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, which shall decide on its overall policies in line with relevant decisions;

3. Board of the GCF

In designing an effective Fund Board, a range of questions must be addressed. These include:

- How should the board be **composed**?
- What **functions** should it serve?
- How should its **officers** be selected?
- What rules should govern **decision-making**?
- What rules should govern **meetings** and **observers**?
- What rules should govern **transparency, confidentiality** and **conflict of interests**?

Issues such as these are to be addressed in an appropriate Fund Instrument establishing and defining the Fund as well as through further guidelines and other documents elaborated by the Fund Board once it is established.

Composition

The Cancun decision decided (Para 103) that the Fund shall be governed by a Board of 24 members, comprising an equal number of members from developing and developed country Parties; representation from developing country Parties shall include representatives of relevant United Nations regional groupings and representatives of small island developing States and the least developed countries; each Board member shall have an alternate member; with alternate members entitled to participate in the meetings of the board only through the principal member, without the right to vote, unless they are serving as the member; during the absence of the member from all or part of a meeting of the Board, his or her alternate shall serve as the member.

² *Id.*

³ UNFCCC, Decision 1/CMP.3, Adaptation Fund, FCCC/KP/CMP/2007/9/Add.1

Functions

Fund boards generally undertake a **range of functions**. These reflect their nature, purpose and composition and usually include functions in the areas of:

- **Strategic planning and policymaking.** Developing, agreeing, reviewing and revising the fund's objectives, strategies, policies, programmes and guidelines in light of the guidance provided by any superior body such as the Conference of Parties.
- **Financial operations.** Mobilizing, managing, allocating, disbursing and reviewing the use of the fund's financial resources to achieve its purpose.
- **Management and administration:** Overseeing the role and performance of the fund's major entities (e.g. trustee, secretariat) and officers (e.g. CEO, staff) to ensure the fund's effective and efficient operation.
- **Expert support.** Securing expert advice to support the management of the fund and its operations, and may involve establishing and overseeing various scientific and technical bodies (e.g. expert panels) designed to help the fund achieve its purpose.
- **Transparency and participation.** Liaising with a range of stakeholders (e.g. the public, affected communities) through both formal arrangements (e.g. partnership forums) and other means (e.g. dialogue, publications, website).
- **Evaluation and reporting.** The periodic review and reporting of the fund's operations (including the operation of its various entities and officers) to its superior entity (e.g. Conference of Parties), governments and the public, and will often involve input from independent evaluators (e.g. auditors, review panels).
- **Coherence.** Engaging with other institutions that perform related functions, including other funds, implementing agencies and other public, private and non-profit bodies that work in areas related to the activities of the fund.

Some of these functions – such as setting priorities, strategies, policies and/or guidelines – may be shared with a superior entity such as the Conference of Parties, in which case the scope of the Fund Board's functions may be defined in terms of providing advice or recommendations, or otherwise be limited to define an appropriate balance and hierarchy of responsibilities.

The **basic functions for the Conference of Parties and the operating entity or entities entrusted with the operation of the Convention's financial mechanism** are set out in Article 11. These include agreeing on arrangements for:

- Modalities to ensure that the funded projects to address climate change are in **conformity with the policies, programme priorities and eligibility criteria** established by the Conference of the Parties;
- Modalities by which a particular **funding decision may be reconsidered** in light of these policies, programme priorities and eligibility criteria;
- Provision by the entity or entities of **regular reports to the Conference of the Parties** on its funding operations, which is consistent with the requirement for accountability set out in Article 11.1 of the Convention; and
- Determination in a predictable and identifiable manner of the **amount of funding necessary and available for the implementation of this Convention** and the conditions under which that amount shall be **periodically reviewed**.

Building on the requirements of the Convention core functions of the Fund Board should at a minimum include:

- Ensuring that funded projects are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties (Article 11.3(a));
- Ensuring funding decisions may be reconsidered in light of the policies, programme priorities and eligibility criteria established by the Conference of Parties (Article 11.3(b));
- Providing regular reports to the Conference of Parties on its funding operations (Article 11.3(c));
- Providing recommendations to the Conference of Parties on the amount of funding necessary and available for the implementation of the Convention (Article 11.3(d));
- Providing support to the periodic review of the amount of funding necessary and available for the implementation of the Convention (Article 11.3(d));
- Assisting the Conference of Parties in mobilizing financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11 (Article 7.2(h)); and
- Providing recommendations on means to enhance consistency of activities undertaken outside the framework of the financial mechanism with the policies, programme priorities and eligibility criteria established by the Conference of Parties (decision 11/CP.1);

Additionally, in terms of overseeing the operation of the Fund, and building on the practice of other relevant funds, the functions of the Fund Board could include:

- Overseeing the operation of the fund in light of its purposes, scope and objectives and periodically reviewing and approving the operating modalities of the fund;
- Providing recommendations on a balanced allocation of funding across thematic areas under the financial mechanism;
- Overseeing the operation of all relevant organs of the fund including the trustee, secretariat, sub-committees, implementing agencies, and expert, advisory and evaluation panels;
- Reviewing and approving the work programme of the fund and monitoring and evaluating progress in achieving it;
- Reviewing and approving the administrative budget of the fund and arranging for performance reviews and audits;
- Appointing and keeping under regular review all fund officers; and
- Exercising such other functions as are required for the effective operationalization of the Convention's financial mechanism in accordance with guidance by the Conference of Parties.

In practice, the functions of the Fund Board should be set out in a Fund Instrument agreed by all Parties and further elaborated through other guidelines and operational modalities. They would be tailored to reflect the intended role of the Board vis-à-vis other institutions such as the Conference of Parties, as well as other aspects of the mechanism such as its thematic areas, panels and other entities.

Board Members

The Members of the Fund Board must be clearly defined, and filled by competent professionals. **The selection of officers – including its Members and its Chair (and co- or vice-Chairs) – is crucial to the success of the mechanism.** It has a significant bearing on the mechanism's direction and continuity, its effectiveness and efficiency, and its accountability to its parties and to other constituencies.

Board members represent different constituencies and vary in number between different funds. In the experience of various Funds (such as the Global Fund for AIDS, TB and Malaria, and the Multilateral Fund for Montreal Protocol) they vary from fourteen members (Multilateral Fund) to twenty-six members (Global Fund). Board members are generally nominated by their constituency and elected or otherwise appointed collectively. In the case of the Adaptation Fund and Multilateral Fund the selection is agreed through an election/endorsement by the Meeting of the Parties to the Kyoto Protocol and the Montreal Protocol, respectively. Fund instruments generally include a range of requirements relating to board members. These address issues such as their selection, term, responsibilities and reappointment. For example:

- **Global Environment Facility.** Members and Alternate Members representing a constituency shall be appointed by the Participants in each constituency. Unless the constituency decides otherwise, each Member of the Council and each Alternate shall serve for three years or until a new Member is appointed by the constituency, whichever comes first. A Member or Alternate may be reappointed by the constituency. Members and Alternates shall serve without compensation. The Alternate Member shall have full power to act for the absent Member.⁴
- **Adaptation Fund:** Members, including alternate members, of the Adaptation Fund Board with the appropriate technical, adaptation and/or policy expertise shall be identified by their respective governments, nominated by the relevant groups and elected by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to serve as government representatives. Vacancies shall be filled in the same manner. Members and alternate members shall serve for a term of two years and shall be eligible to serve a maximum of two consecutive terms;⁵
- **Multilateral Fund:** The Meetings of the Parties endorses annually the selection of seven Parties each by the two groups of Parties (developed and developing countries, operating and not operating under Article 5.1, respectively) to serve on the Executive Committee. Members representing either one or the other of the two groups can be changed in accordance with the wishes of the group concerned.⁶
- **Global Fund:** Each group mentioned in the Bylaws (i.e. developing countries, donors, civil society and private sector) will determine a process for selecting its Foundation Board representation. Board Members will serve as representatives of their constituencies. Foundation Board Members will serve on the Foundation Board for two

⁴ Global Environment Fund, *Instrument for the Establishment of the Restructure GEF*, p. 15.

⁵ UNFCCC, Decision 1/CMP.3, p. 4-5, par 8; See also, Decision 1/CMP.4, p. 5, par 3-9

⁶ The Multilateral Fund Secretariat, *Policies, Procedures, Guidelines and Criteria*, p. 85

years or such other term that the Foundation Board may determine. The Executive Director shall act in his or her capacity as chief executive officer of the Foundation and will serve the Foundation Board for the duration of his or her term. Board Members shall be deemed to act in their capacity as representatives of their respective governments, organizations, constituencies or other entities.⁷

- **Climate Investment Funds:** Under the CTF and SCF, Members will serve for a two-year term, except that such representatives may serve for a one-year term for the first year of the fund's operations. Retiring Members may be reappointed. Not more than one Member will be a representative of the same country at any given time. To be selected as a Member a contributor country (or group of contributor countries) will be required to make a commitment, by entering into a Contribution Agreement with the Trustee to contribute in no less than the minimum amount determined through a consultation among contributor countries. Under the CTF, terms will be staggered so that not all Members are replaced each year.⁸

Many funds identify a significant role for constituencies in nominating their own representatives (and in some cases in appointing them). The GEF provides that “the Member and Alternate representing a constituency shall be appointed by the Participants in each constituency”.⁹ The Global Fund explicitly allows each group to define its own selection process. The Adaptation Fund and the Multilateral Fund require members once nominated to be elected or endorsed by their respective superior bodies (i.e. the Meetings of the Parties to the Kyoto Protocol and the Montreal Protocol, respectively).

Funds have developed various means to balance continuity and change. Some funds, such as the Adaptation Fund, have a limit on board members serving more than two consecutive terms. Others, such as the CTF, require the appointment of members to be staggered so that not all Members are replaced each year. Defining rules for the selection and function of board members is important as the board members, as well as the rules within which they operate, will have a significant effect on the fund's operation and outcomes.

Institutions are often only as good as their leadership. The role of the **board chair (and co- or vice-chairs)** and of other leading offices (e.g. CEO of a Secretariat) is therefore crucial. In relation to the office of chair (and co- or vice-chairs), approaches vary in various funds in terms of:

- **Designation of offices.** Most fund boards have either a chair and vice-chair, or co-chairs. In the case of the GEF, a single chairperson is elected. The office can be defined to serve a substantial role (e.g. Global Fund) or more nominal role (e.g. GEF) – representing a spectrum of functions ranging from a leader and advocate of the fund and its mission to a “traffic cop” at meetings.
- **Constituency.** Most fund boards nominate their chair(s) from their different constituencies or groups (e.g. developed and developing countries). In the case of the

⁷ The Global Fund to Fight AIDS, Tuberculosis & Malaria By-Laws, p. 5, Article 7.3

⁸ Climate Investment Funds, *Governance Framework for the CTF*, p. 6-7, par. 21 and 22.

⁹ Instrument for the Establishment of the Restructured Global Environment Facility, p. 15, par 16

SCF, one of the co-chairs is a World Bank Vice President. Chairs do not formally “represent” these constituencies; they must serve in their role independently. Their selection, nevertheless, influences the relative influence of the constituencies vis-à-vis each other and related institutions.

- **Selection.** Most fund boards elect their chairs collectively, while some delegate selection to their constituencies. In the case of the Multilateral Fund, for example, the two constituency groups (Article 5.1 and non-Article 5.1 countries) each select a chair from among their respective members (to serve as chairman or vice-chairman on a rotating basis).
- **Role.** In most cases, the chair is responsible for conducting the proceeding of the fund board. In the case of the GEF, the function of chair is effectively shared with the CEO, who jointly conducts deliberations on some topics, and conducts deliberations on other topics alone.
- **Term.** Chairs are variously selected on a two-year (Global Fund), annual (Adaptation Fund and Multilateral Fund), six-month (Climate Investment Funds) or meeting-by-meeting basis (GEF). Term length is related to other factors, and affects the extent to which the chair versus other offices (e.g. the Secretariat or host institution) shape the fund’s proceedings and direction.
- **Rotation.** In consecutive terms, the position of chair (and where relevant, vice-chair) generally alternates between its different constituencies. In the case of the SCF, one co-chair rotates while the other does not (i.e. the World Bank Vice President). Where country co-chairs are appointed, as in the case of the CTF, rotation is unnecessary.

Fund instruments join these and other factors in a range of combinations. For example:

- **Global Environment Facility:** At each meeting, the Council shall elect a Chairperson from among its Members for the duration of that meeting. The elected Chairperson shall conduct deliberations of the Council at that meeting on certain issues related to Council responsibilities. The position of elected Chairperson shall alternate from one meeting to another between recipient and non-recipient Council Members. The Chief Executive Officer of the Facility (CEO) shall conduct deliberations of the Council on certain other issues related to Council responsibilities. The elected Chairperson and the CEO shall jointly conduct deliberations of the Council on certain issues of joint competence as defined in the GEF Instrument.¹⁰
- **Adaptation Fund:** The Board shall elect the Chair and Vice-Chair from among its members, with one being from an Annex I Party and the other being from a non-Annex I Party. The term of office of the Chair and Vice-Chair shall be one calendar year. The office of Chair and Vice-Chair shall alternate annually between a member from an Annex I Party and a member from a non-Annex I Party.¹¹
- **Multilateral Fund:** The Chairman and Vice-Chairman of the Executive Committee shall be selected from the fourteen members. The office of Chairman is subject to rotation, on an annual basis, between the Parties operating under paragraph 1 of Article 5 (i.e. developing countries with certain (low) annual per-capita consumption of controlled

¹⁰ *Id.*, p. 16, par. 18

¹¹ UNFCCC, *Decision 1/CMP.3*, p. 5, par. 13. See also, *Decision 1/CMP.4*, p. 5-6, par. 10-16

substances), and the Parties not so operating. The group of Parties entitled to the chairmanship shall select the Chairman from among their members of the Executive Committee. The Vice-Chairman shall be selected by the other group from within their number.¹²

- **Global Fund:** Board Members will select the Chair and the Vice Chair of the Foundation Board from among voting Board Members, provided that the two positions will alternate every two years between the two voting groups (i.e.: 1) eight donors and two private sector representatives; and 2) seven developing country, two NGO and one representative living with HIV/AIDS, or from a community living with tuberculosis or malaria). The Chair and the Vice Chair will each be elected for two-year terms. In addition to chairing board meetings, the Chair will also have an important advocacy and fund raising role.¹³
- **Climate Investment Funds:** The CTF and SCF have slightly different arrangements. The CTF Trust Fund Committee will elect two co-chairs from among its Members to serve for a six-month term. One co-chair will be a representative of a recipient country and the other co-chair will be a representative of a contributor country.¹⁴ The SCF Trust Fund Committee will have two co-chairs. One co-chair will be elected from among the Members representing contributor or recipient countries to serve for a six-month term, alternating from one term to another between recipient and contributor representative Members. The other co-chair will be the World Bank Vice President for the Sustainable Development Network.¹⁵

In terms of comparison, the Global Fund establishes a two-year term enabling the chair to play a more extensive role in promoting the fund, including in relation to advocacy and fund-raising (which accounts in part for the fund's continuity and success in fundraising). The GEF and Climate Investment Funds, by contrast, have considerably shorter terms for elected chairs and, in the case of the GEF and SCF, a larger role for other officers (e.g. the GEF CEO and a World Bank Vice President, respectively) (which accounts in part for the larger influence of these offices/institutions vis-à-vis country parties). The Adaptation Fund and Multilateral Fund, in turn, select a chair and vice-chair annually from among their members.

In the case of the Adaptation Fund and Multilateral Fund, the constituencies are defined in relation to categories established in their respective Conventions. In the case of the GEF and Climate Investment Funds, by contrast, the constituencies are defined more explicitly in financial terms – i.e. as recipients and non-recipient/contributor countries (which has been identified by some participants as establishing a hierarchy, in effect, if not in fact).

Quorum and decision-making

Decision-making generally requires a sufficient number of members to be present (i.e. a quorum) as well as a process for decision-making by consensus, voting or other means.¹⁶

¹² The Multilateral Fund Secretariat, *Policies, Procedures, Guidelines and Criteria*, p. 85

¹³ The Global Fund, *By-Laws*, p. 5, Article 7.3

¹⁴ Climate Investment Funds, *Governance Framework for the CTF*, p. 8, par. 26

¹⁵ Climate Investment Funds, *Governance Framework for the SCF*, p. 7, par 21

¹⁶ The Global Environment Facility, *Instrument for the Establishment of the Restructured GEF*, p. 16, par 17

A quorum is required to ensure decision-making remains representative and accountable to all relevant constituencies. In relation to a quorum some funds require a simple majority (e.g. the Adaptation Fund). Other funds require two-thirds of the board to be present (e.g. the Global Environment Facility). Other funds require a majority of each of the relevant voting groups to be present (e.g. the Global Fund).

Most **fund instruments require decisions to be taken by consensus** (with other means used only to address a situation in which consensus is not possible). Consensus is generally defined to mean no formal opposition to a decision, although the practice of decision-making (e.g. the degree to which positive assent versus the absence of dissent) will vary in different settings:

- **Global Environment Facility:** Decisions of the Assembly and the Council shall be taken by consensus. In the case of the Council if, in the consideration of any matter of substance, all practicable efforts by the Council and its Chairperson have been made and no consensus appears attainable, any Member of the Council may require a formal vote.¹⁷
- **Adaptation Fund:** Decisions of the Board shall be taken by consensus whenever possible. If all efforts at reaching a consensus have been exhausted and no agreement has been reached, decisions shall be taken by a two-thirds majority of the members present at the meeting on the basis of one member, one vote.¹⁸
- **Multilateral Fund:** Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached decisions may be adopted by a vote.¹⁹
- **Global Fund:** The Foundation Board shall use best efforts to make all decisions by consensus. If all practical efforts by the Foundation Board and the Chair have not led to consensus, any member of the Foundation Board with voting privileges may call for a vote.²⁰
- **Climate Investment Funds:** Decisions by the CTF and SCF Trust Fund Committees will be made by consensus of its decision making Members. Consensus is a procedure for adopting a decision when no participant in the decision-making process blocks a proposed decision. For the purposes of the CTF and SCF, consensus does not necessarily imply unanimity. A dissenting decision maker, who does not wish to block a decision, may state an objection by attaching a statement or note to the decision. If consensus is not possible, then a proposed decision will be postponed or withdrawn.²¹

Most fund instruments include references to **decision-making by voting** in order to address situations in which consensus is not possible. Voting provides a means to break deadlocks and encourage constructive engagement (e.g. the prospect of a vote changes participant's incentive structures). At the same time, voting is generally avoided in practice due to concerns about the

¹⁷ The Global Environment Facility, *Instrument for the Establishment of the Restructured GEF*, p. 19, par 25 a-c

¹⁸ UNFCCC, Decision 1/CMP.3, p. 5, par 12. See also, Decision 1/CMP.4, p. 8-9, par 44-51

¹⁹ Montreal Protocol, Article 10.9

²⁰ The Global Fund to Fight AIDS, Tuberculosis & Malaria, By-Laws, p. 7, Article 7.6

²¹ Climate Investment Funds, *Governance Framework for the CTF*, p. 8, par 27

effect on board dynamics, precedent setting, and sovereignty. In some cases, majority and weighted voting is designed to address these concerns:

- **Global Environment Facility:** Unless otherwise provided in the GEF Instrument, decisions requiring a formal vote by the Council shall be taken by a double weighted majority; that is, an affirmative vote representing both a 60 percent majority of the total number of Participants and a 60 percent majority of the total contributions.²²
- **Adaptation Fund:** Decisions of the Adaptation Fund Board shall be taken by consensus; if all efforts at reaching a consensus have been exhausted, and no agreement has been reached, decisions shall be taken by a two-thirds majority of the members present at the meeting on the basis of one member, one vote.²³
- **Multilateral Fund:** If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the Parties present and voting, representing a majority of each group present and voting – ensuring that neither donors nor recipients dominate the operations of the Fund.²⁴
- **Global Fund:** In order to pass, motions require a two-thirds majority of those present of both: a) the group encompassing the eight donor seats and the two private sector seats and b) the group encompassing the seven developing country seats, the two non-governmental organization seats, and the representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria.²⁵
- **Climate Investment Funds:** The instruments establishing the Climate Investment Funds do not include any explicit reference to voting.

In addition to consensus and voting, **other means for decision-making** are possible. The Global Fund’s board, for example, may take decisions on a “no-objection basis” (suggesting, in turn, that its definition of consensus errs towards positive assent versus absence of dissent):

On such basis, and subject to procedures set by the Board, a motion shall be deemed approved unless four Board members of one of the voting groups described above objects to the motion, except that a motion not to make a funding commitment shall be deemed approved unless four Board members of each of the voting groups described above object to the motion.²⁶

The Chair of the board may also take decisions inter-sessionally, subject to review by the board:

Between Board meetings, the Chair and the Vice Chair, acting together, shall take action on behalf of the Foundation Board which they consider must be taken urgently without recourse to other procedures as provided in the Bylaws or Board Operating Procedures. In the event the Chair and Vice Chair are unable to agree, the Chair shall take the decision. Decisions taken between Foundation Board meetings shall be notified to the

²² *Id.*, For the purpose of voting power, total contributions shall consist of the actual cumulative contributions made to the GEF Trust Fund, contributions made to the GET, and the grant equivalent of co-financing and parallel financing made under the GEF pilot program, or agreed with the Trustee. See, par 25(c)

²³ UNFCCC, Decision 1/CMP.3, p. 5, par 12. See also, Decision 1/CMP.4, p. 8-9, par 44-51

²⁴ Article 10.9. See, also, http://www.multilateralfund.org/executive_committee/1071087830987.htm

²⁵ The Global Fund to Fight AIDS, Tuberculosis & Malaria By-Laws, p. 7, Article 7.6

²⁶ *Id.*, p. 7, Article 7.6

Foundation Board immediately, with an explanation of why such decision was deemed urgent. A full report on the decision shall be presented to the Foundation Board at its subsequent meeting. The Foundation Board will review, and may modify or reverse, the decision.²⁷

The GEF is similarly empowered to take decisions inter-sessionally and on a non-objection basis. If, in the judgment of the CEO, a proposed decision should not be postponed it shall transmit the decision to each member with an invitation to approve it on a “no-objection basis”. At the expiration of a period for comments, the decision shall be approved unless there is an objection. Replies from two thirds of the Members (and no objections) are required for decisions with financial implications. In the event of an objection, the decision will be postponed for consideration at the next meeting.²⁸

Meetings

Most fund instruments define a minimum frequency of meeting (usually twice a year), while also empowering the board to meet as frequently as required to discharge its responsibilities:

- **Global Environment Facility:** The Council shall meet semi-annually or as frequently as necessary to enable it to discharge its responsibilities. The Council shall meet at the seat of the Secretariat unless the Council decides otherwise.²⁹
- **Adaptation Fund:** The Board shall meet at least twice every year or as frequently as necessary to enable it to discharge its responsibilities. The meetings of the Board shall take place in the country of the seat of the UNFCCC secretariat, except when meeting in conjunction with sessions of the CMP or with the sessions of subsidiary bodies under the UNFCCC, in which case the Board meeting may take place in the country or at the venue of the relevant UNFCCC meeting.³⁰
- **Multilateral Fund:** The Executive Committee shall hold three meetings a year while retaining the flexibility to take advantage of the opportunity provided by other Montreal Protocol meetings to convene additional meetings where special circumstances make this desirable.³¹
- **Global Fund:** The Foundation Board shall meet as often as necessary but not less than twice per year. A meeting of the Foundation Board shall be convened by written notification from the Chair or the Vice Chair of the Foundation Board, or by the Executive Director at the direction of the Chair or the Vice Chair.³²
- **Climate Investment Funds:** The CTF and SCF Trust Fund Committee will each meet at such frequency as they may decide, but at least once a year.³³ Further, the CTF Trust Fund Committee may, without meeting, review and approve CTF financing for programs

²⁷ *Id.*, p. 5, Article 7.3

²⁸ Rules of Procedure for the Global Environment Facility Council, p. 17, par 43-45

²⁹ Global Environment Facility, *Instrument for the Establishment of the Restructured GEF*, p. 16, par 17

³⁰ UNFCCC, Decision 1/CMP.4, p. 6-7, par 18. See also, Decision 1/CMP.3, p. 5, par 5

³¹ The Multilateral Fund Secretariat, *Policies, Procedures, Guidelines and Criteria*, p. 519.

³² The Global Fund to Fight AIDS, Tuberculosis & Malaria By-Laws, p. 7, Article 7.6

³³ Climate Investment Funds, *Governance Framework for the CTF*, p. 8, par 28; and *Governance Framework for the SCF*, p. 8, par 23

and projects and any other matters as needed, at a level and through means and procedures appropriate to such review.³⁴

The Global Fund and the CTF each include provisions that enable decisions to be taken intersessionally as well as at formal meetings.

Observers

Allowing observers to attend meetings increases the transparency of the funds deliberations and enables a range of stakeholders to participate in its activities. By enabling communication, it can also help to improve cooperation among partners, promote the efficient use of resources and enable more mutually supportive activities among different institutions. Fund instruments often specify a set of stakeholders to be invited as observers. They also often explicitly empower the board or some other officer (e.g. a secretariat) to invite other entities with an interest in or expertise relevant to the activities of the fund. For example:

- **Global Environment Facility:** Council meetings are open to Members (including two advisors), alternates, and the CEO or his/her representative, and to observers representing Participant countries, Implementing Agencies, the Trustee, the Scientific and Technical Advisory Panel, the Evaluation Office, the UNFCCC, Convention on Biological Diversity, Montreal Protocol, Convention to Combat Desertification and UN Commission on Sustainable Development. The CEO may, in consultation with the Council, invite representatives of other entities including nongovernmental organizations.³⁵
- **Adaptation Fund:** Except where otherwise decided by the Board, meetings shall be open for attendance, as observers, to representatives of UNFCCC Parties, the UNFCCC secretariat and UNFCCC accredited observers. The secretariat shall, upon the request of the Board, notify any individual or entity, whether national or international, governmental or non-governmental, qualified in a field related to the work of the Fund, of any meeting so that an observer may represent them. Observers may attend without the right to vote.³⁶
- **Multilateral Fund:** The President of the Bureau and the Implementing Agencies - inter alia, UNEP, UNDP and the World Bank - may participate as observers. Any body or agency, whether national or international, governmental or nongovernmental, qualified in the field related to the work of the Executive Committee, that has informed the Secretariat of its wishes to be represented may be represented by an observer subject to the condition that their admission is not objected to by at least one third of the Parties present at the meeting. Observers participate without the right to vote.³⁷
- **Global Fund:** Delegations to Board meetings may include additional delegates, advisers and/or observers, *provided, however*, that the total delegation will normally not exceed 10 persons, no more than 5 of whom shall be on the floor at any one time. The Chair may invite guests to Board meetings at such times and for such purposes as he or she deems

³⁴ *Id.*, p. 8, par 28

³⁵ Rules of Procedure for the GEF Council, p. 11, par 17-23

³⁶ UNFCCC, Decision 1/CMP.4, p. 7-8, par 31-34, See also, Decision 1/CMP.3, p. 6, par 16

³⁷ The Multilateral Fund Secretariat, *Policies, Procedures, Guidelines and Criteria*, p. 519

appropriate.³⁸

- **Climate Investment Funds:** The CTF and SCF will each invite members of their MDB Committees and Trustees as observers. The CTF will also invite the GEF and representatives of other concerned UN organizations, and may also invite representatives of other institutions with a mandate to promote investment in clean technology. The SCF will also invite representatives of the GEF, UNDP, UNEP and UNFCCC, and may also invite any member of its SCF Sub-Committees, as well as other organizations with a mandate to address climate change including NGOs and the private sector.³⁹

In all cases, observers are permitted to attend fund meetings. Generally, discretion to invite additional observers (i.e. those not explicitly listed in the fund instrument) lies with the board. In the case of the GEF, the GEF CEO is empowered to invite representatives of other agencies “in consultation with the Council”. In the case of the Multilateral Fund the secretariat has discretion to invite observers, who may attend unless objected to by at least one third of the Parties present. In the case of the Global Fund, delegations are permitted to include observers subject to a numerical limit. In the case of the CTF, a recipient country will be invited to attend during deliberations on its investment plan, program or project (though its attendance is as a full member rather than as an observer). In all cases, an open policy towards observers is desirable and should be encouraged subject to logistical and other reasonable constraints.

Transparency

In addition to admitting observers a range of means is available to provide a window of transparency into the deliberations and operations of a fund. One means is to ensure that the texts of board decisions are made publicly available. The Adaptation Fund, for example, is required to ensure that “the full text of all decisions taken by the Adaptation Fund Board shall be made publicly available in all six official languages of the United Nations.”⁴⁰ The Global Fund similarly requires “board decisions and related document will be made public” according to its “documents policy”.⁴¹ In general, an elaborated policy relating to the transparency of board deliberations, and to the transparency of other fund-related activities, is desirable.

Confidentiality

The need for transparency must be balanced against the need for confidentiality in relation to certain specific categories of information. The Adaptation Fund, for example, provides that information marked as proprietary and/or confidential shall not be disclosed without the written consent of its provider, and calls on member to take a written oath declaring that, among other things, they will not disclose any information marked confidential and coming into their knowledge by reasons of their duties in the board.⁴²

³⁸ The Global Fund to Fight AIDS, Tuberculosis & Malaria Board Operating Procedures, p. 2-3, par 3

³⁹ Climate Investment Funds, *Governance Framework for the CTF*, p. 8, par 29-30; and *Governance Framework for the CTF*, p. 8-9, par 24-25

⁴⁰ UNFCCC, Decision 1/CMP.3, par 17

⁴¹ The Global Fund to Fight AIDS, Tuberculosis & Malaria, Board Operating Procedures, p. 7, par 15

⁴² UNFCCC, Decision 1/CMP.3, par 26 to 30

Conflict of interests

Closely related to issues of transparency and confidentiality are issues of conflicts of interests; both actual and potential, real and perceived. Most fund instruments include requirements relating to conflicts of interests and the means by which they are resolved. The Adaptation Fund's oath of service, for example, requires members to disclose immediately to the board any interest in any matter under discussion before the Adaptation Fund Board which may constitute a conflict of interests or which might be incompatible with the requirements of independence and impartiality. Members are expected to recuse themselves from participating in those matters.⁴³ Some funds have elaborated detailed policies on ethics and conflicts of interests for their institutions. The Global Fund's policy, for instance, identifies relevant "covered individuals", defines a conflict of interests and provides examples thereof, establishes rules on transparency and disclosure, sets out procedures for when a conflict arises, and addresses specific situations – such as gifts and employment.⁴⁴

4. Specialized funds or thematic windows

Regarding thematic areas for financing, the Convention provides that financial resources are to be provided in a range of areas including:

- Adaptation (Article 4.1, 4.3 and 4.4);
- Mitigation, including forests (Article 4.1 and 4.3);
- Technology development and transfer (Article 4.1, 4.3 and 4.5);
- Communications, capacity building and other actions (Article 4.1, 4.3 and 12.1)

The financial mechanism's institutional arrangements – including its funds and/or fund windows – should be tailored in light of the specific characteristics of each of these different areas (i.e. reflecting the different needs, issues, actors and sectors/systems), while ensuring coherence between the different parts.

The Conference of Parties and the Fund Board could establish specialized funds and funding windows, as well as a mechanism to link the various elements of the architecture.

Such an approach could be realized through the establishment of a number of separate funds or fund windows, or through a single fund to provide dedicated funding to different programs.

As well as an overarching Fund Board (discussed above), the architecture should include appropriate arrangements for administering the funds, securing expert and stakeholder input, assessing the fund's performance generally, as well as appropriate procedures for monitoring and evaluating specific aspects of the fund and its operations. Options for addressing these topics as part of a coherent and effective architecture are discussed further below.

⁴³ UNFCCC, Decision 1/CMP.3, par 28

⁴⁴ The Global Fund, *Policy on Ethics and Conflict of Interest for Global Fund Institutions*.

5. Secretariat

The Cancun decision in Para 108 decided that “the operation of the Fund shall be supported by an independent Secretariat.”

The function of a Secretariat is to support the Parties and the Fund Board to discharge its functions and achieve the objectives of the Fund. A Secretariat would provide organizational, administrative and technical support to the Fund Board, as well as to its sub-committees and expert, consultative and assessment bodies. To perform its role successfully, a Secretariat should be comprised of professionals with expertise in management, administration, finance, climate change and other relevant fields.

In the various funds, secretariat functions are provided by different agencies. In the case of the Multilateral Fund, an independent secretariat was established to support the fund board. Its activities include:

- Developing the three-year plan and budget and a system for fund disbursement;
- Managing the business planning cycle of the Multilateral Fund;
- Monitoring the expenditures and activities of the implementing agencies;
- Preparing policy papers and other documents;
- Reviewing and assessing investment projects, country programmes and the business plans and work programmes of the implementing agencies;
- Liaising between the Committee, governments and implementing agencies; and
- Servicing meetings of the Executive Committee.⁴⁵

In the case of the Climate Investment Funds, the World Bank serves as secretariat. In the case of the GEF, the GEF secretariat provides this role. In the case of the Adaptation Fund, Parties to the Kyoto Protocol invited the GEF to provide secretariat functions on an interim basis to be reviewed in 2011.

Since the COP in Cancun decided that the Green Climate Fund would have an independent Secretariat, there would be good lessons to be learnt from the experience of the Multilateral Fund’s independent secretariat.

In designing an effective Secretariat consideration should be given to its relationship with other entities, its scale and its leadership. The purpose of the Secretariat is to serve the Parties and the Fund Board. Consequently, **the Secretariat’s functional independence of other entities is important**. Just as any effective national system separates and balances different roles and powers, so to must an effective international arrangement. This is particularly true where a variety of different actors are likely to be involved, large sums of money are to be managed, and discussions of financing may become politicized, as is likely in the case of climate change.

⁴⁵ Multilateral Fund, *Institutional Arrangements*. http://www.multilateralfund.org/fund_secretariat.htm. The Secretariat also performs a monitoring and evaluation function, established by the Executive Committee in May 1997

In the case of the Multilateral Fund, for example, the Secretariat is dedicated to serving the fund board and is independent of the Secretariat to the Ozone Convention. This helps to ensure that disbursement of funding remains distinct from the political discussions regarding interpretation and implementation of the Ozone Convention and Montreal Protocol, and the negotiation of substantive new rules and procedures. In this regard, Parties may wish to keep the secretarial functions required to support the disbursement of climate finance (i.e. the Fund Secretariat) separate from those designed to support the climate negotiations (i.e. the UNFCCC Secretariat). At the same time, an appropriate relationship between the two (while maintaining independence) could help to build synergies and ensure coordination.

The scale of the Secretariat should logically reflect the scale of the tasks entrusted to it. This includes providing administrative and technical support to a Board that, in turn, is expected to manage and disburse multiple billions of dollars. In light of the scale of resources required (starting with the figure of \$30 billion fast-start financing for three years, to the \$100 billion per year by 2020, included in the Cancun decision, through to the much larger estimates based on empirical analysis) a substantial secretariat is likely to be required.

Ultimately, the scale of the Fund Secretariat will depend in part on other decisions regarding the Fund, and its role vis-à-vis other institutions. Nevertheless, if the Fund is to help spur the rapid and fundamental transformation of national economies and societies that is required to address climate change – a transformation some senior economists have referred to as “the next industrial revolution” – then a substantial institution will be required.

Finally, employing experienced professionals and ensuring the highest quality of leadership will enhance the effectiveness of the Secretariat. **The Secretariat’s office of President or Chief Executive Officer should be filled by a senior official** with an understanding of the needs and challenges of developing countries and extensive experience related to government, finance and international affairs. Parties should elect this person on the basis of experience and integrity, and candidates could include senior individuals with extensive experience, and significant networks and relationships of value to the Fund and its Board.

Among the skills needed by at least a significant part of the senior management of the Secretariat and its other officers are in-depth knowledge and if possible experience of the socio-economic conditions of developing countries, and the dynamics of the developmental processes, as well of course a knowledge of climate change and environmental issues. This is because the role of the Fund is not merely the disbursement of funds or the technical solving of problems, but the transformational function of integrating climate change and environmental concerns into the economic and social plans and structures, within the context of sustainable development, and while maintaining the goals of economic growth and poverty eradication.

Expert and technical panels

The Secretariat, under the guidance of the Board, could establish expert and technical panels to support its work, including in providing technical advice to developing countries, and in providing inputs into the Fund's activities.

To be effective **the financial mechanism, and the UNFCCC more broadly, must galvanize the expertise and engagement of experts** on issues relating to climate change and to development via its subsidiary bodies and other means.

In practice, **addressing climate change will require a major scaling-up of expert engagement and advice at the international level, and in all sectors, countries and regions.** This effort must build on the experience of the UNFCCC Expert Group on Technology Transfer (see box), the Intergovernmental Panel on Climate Change, and other relevant entities⁴⁶; it will need to engage effectively with existing institutions; and it should establish new institutions as appropriate to advise the fund and to help catalyze and coordinate practical actions.

Expert and technical panels have been established in the context of other relevant funds and Conventions. The GEF, for example, has a Scientific and Economic Advisory Panel hosted by UNEP and comprising around fifteen members with expertise across all GEF key areas of work (biodiversity, biosafety, climate change, coastal and fresh water management, sustainable land management, persistent organic pollutants, and integrated ecosystem management).

The Montreal Protocol has established a set of expert groups (known as Technical Options Committees or TOCs) to provide technical advice on the principal sectors in which ozone-depleting substances are used. The co-chairs of each of these committees are drawn from developed and developing countries, and the committees include experts drawn from government agencies, industry, academia, and civil society. The co-chairs, in turn, participate in an overarching group (known as the Technical and Economic Assessment Panel or TEAP), which consolidates their reports and provides a synthesis of technical and economic information on a regular basis to the Montreal Protocol's Meeting of the Parties.⁴⁷ This set of institutions has provided a practical and action-oriented architecture through which experts can engage with each other and with Parties to support the work of the Montreal Protocol. These entities – as well as the Multilateral Fund itself – have contributed significantly to the success of the Montreal Protocol in achieving its objectives.

⁴⁶ The IPCC's role as a scientific institution designed to synthesize and present authoritative scientific information on climate change is important. At the same time, more regular technical advice and information is needed on a real-time basis to help guide action on climate change. The role of any enhanced technical institutions under the Convention and its financial mechanism should be carefully calibrated to serve these functions while complementing those of the IPCC.

⁴⁷ K. Madhava Sarma, et al., *Lessons from the Success of the Montreal Protocol*, in *THE MONTREAL PROTOCOL: CELEBRATING 20 YEARS IN ENVIRONMENTAL PROTECTION* (Cameron and May, 2007), p. 125 at p. 132 (stating "The TEAP consists of the co-chairs of the TOCs and a few other experts. It has three co-chairs. Each TOC has co-chairs from both developing and developed countries and 20-35 members from all parts of the world. Members of the TEAP are appointed by the Meeting of the Parties (MOPs). Governments may propose members for TOCs. TOC membership consists of representatives of government environment ministries, industry and academia and a few professional consultants. The co-chairs of the TOCs have full freedom to choose whom they want as members in consultation with the TEAP; their choices will be based on the expertise needed, which may vary over time"). See also, Andersen, Stephen O. et al., "Technology Transfer for the Ozone Layer: Lessons for Climate Change" Earthscan Publications Ltd, 2007.

Building on these experiences, **a set of Technical Panels could be established to support the UNFCCC Financial Mechanism, Subsidiary Bodies and Conference of Parties.** Building in particular on the experience of the Montreal Protocol (while reflecting the diverse nature of the issues, actors and sectors/systems affected by climate change) these could provide forums in which to collect and consolidate expertise on each of the relevant mitigation and adaptation sectors and sub-sectors, such as those identified by the Intergovernmental Panel on Climate Change. These include:

Mitigation	Adaptation
Energy	Health
Transportation	Freshwater resources
Residential and commercial buildings	Coastal and low-lying areas
Industry	Industry, infrastructure and settlements
Agriculture	Food and agriculture
Forestry	Ecosystems and forests
Waste management	

Among other things, Technical Panels could serve the functions of:

- Exchanging information in relation to relevant sectors/systems;
- Helping to build capacity, share experiences and develop best practices;
- Supporting national networks and coordinating mechanisms;
- Identifying practical solutions (policy, economic, technological, etc);
- Identifying means to integrate mitigation, adaptation and other priorities;
- Providing assessments of needs and incremental costs; and
- Helping to match needs with financial, technological and capacity building.

Information provided by the various Technical Panels could, in turn, be regularly synthesized by an overarching group comprised of relevant experts endorsed by the Conference of Parties (including the co-chairs of each of the Technical Panels). This Expert Group could, for example, draw from the model of the Montreal Protocol’s Technical and Economic Assessment Panel. Its results could feed into deliberations by the Fund Board and the Secretariat (e.g. relating to the relevant Funds and/or Fund Windows on adaptation, mitigation, forests and technology) as well as to the Convention’s other Subsidiary Bodies and its Conference of Parties.

As in the case of the Montreal Protocol, **well-defined technical and expert bodies under the UNFCCC can provide a locus for effective action.** They can enable experts representing the public, private and non-profit sectors to coalesce to identify problems and practical solutions.

They can tie into and engage with relevant sectoral and national networks, and help to link them with each other at the international level. And they can feed expertise into the more formal bodies of the Convention, including its Funds and Financial Mechanism, its other Subsidiary Bodies and its Conference of Parties.

Consultative panels

A number of fund instruments establish panels designed to provide a forum for engaging and consulting with stakeholders and other partners. Such Consultative Panels could also be considered for being part of the GCF, either as linked to the Secretariat or the Board..

The Global Fund establishes a Partnership Forum to provide persons and entities concerned about the prevention, care, treatment and eventual eradication of HIV/AIDS, tuberculosis and malaria with a forum to express their views on its policies and strategies. It is open to representatives of donors, multilateral development cooperation agencies, developed and developing countries, civil society, NGO and community based organizations, technical and research agencies and the private sector.⁴⁸The forum is mandated to:

- Review progress based on reports from the Foundation Board and provide advice to the Foundation on general policies;
- Provide an important and visible platform for debate, advocacy, continued fund raising, and inclusion of new partners;
- Mobilize and sustain high level coordination, political commitment and momentum to achieve the Foundation's objectives; and
- Provide a communication channel for those stakeholders who are not formally represented elsewhere in the governance structure.

The Climate Investment Funds each establish a Partnership Forum as a “broad based meeting of stakeholders of the [fund], including contributor and eligible recipient countries, MDBs, UN organizations, GEF, UNFCCC, the Adaptation Fund, bilateral development agencies, Non-Governmental Organizations (NGOs), private sector entities, and scientific and technical experts.”⁴⁹ These serve as a venue for identifying representatives of countries to serve on the fund boards, and provide an “opportunity for independent scientific, technical and other advice on major issues of implementation”.⁵⁰ UNEP is invited to collaborate in proposing ways to ensure scientific and expert input into the Partnership Forum.⁵¹ As well as the Partnership Forum, the Climate Investment Funds each establish an MDB Committee to facilitate collaboration, coordination and information exchange among the multilateral development banks.⁵²

⁴⁸ The Global Fund to Fight AIDS, Tuberculosis & Malaria Board Operating Procedures, p. 3, Article 6

⁴⁹ Climate Investment Funds, *Governance Framework for the CTF*, p. 8, par 31-33; and *Governance Framework for the SCF*, p. 10-11, par 35-36

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*, *Governance Framework for the CTF*, p. 9, par 34-35; and *Governance Framework for the SCF*, p. 10, par 32-34

Other funds have adopted less formal structures for engaging with stakeholders. The GEF, for instance, engages with non-governmental organizations principally by accrediting them as part of a network, establishing regional NGO focal points, organizing NGO consultations and providing information through on-line and printed guides and their website.⁵³ The GEF CEO is also mandated to periodically convene meetings with the heads of its implementing agencies to promote interagency collaboration and communication.⁵⁴

6. Trustee

The Cancun decision in para 104-107 decided on issues relating to the GCF's trustee. It decided that the trustee shall have the administrative competence to manage the Fund's financial assets, maintain appropriate financial records and prepare financial statements and other reports required by the Board in accordance with internationally accepted fiduciary standards. The trustee shall administer the assets of the Green Climate Fund only for the purpose of, and in accordance with, the relevant decisions of the Board; the trustee shall hold the assets of the Green Climate Fund separate and apart from the assets of the trustee, but may commingle them for administrative and investment purposes with other assets maintained by the trustee; and the trustee shall establish and maintain separate records and accounts to identify the assets of the Green Climate Fund; the trustee shall be accountable to the Green Climate Fund Board for the performance of its fiduciary responsibilities; and the World Bank was invited to serve as the interim trustee.

The **function of the trustee** is generally to:

- Establish and manage a trust fund or funds in accordance with the fund instrument;
- Receive and hold in trust financial contributions;
- Invest and manage the funds (and associated assets and receipts);
- Transfer and disburse funds;
- Undertake its functions in compliance with the instructions of the Fund Board; and
- Report regularly on the fund's financial status and management.

In defining the role of a trustee (or trustees) a range of considerations arise. One is the scale and extent of the trustee's costs that will be covered by the Fund. Fund instruments generally provide that the reasonable costs of the trustee in performing its duties will be covered. The scale of costs, however, may differ significantly between institutions, and should be considered when selecting a trustee.

For this reason, the G77 and China proposed that **the Trustee should be selected through a process of open bidding to ensure resources are managed as efficiently as possible**; ensuring a larger proportion of donor finance reaches its intended end-use. Candidates for such a process

⁵³ See, for instance, http://207.190.239.143/Partners/partners-Nongovernmental_Organ/partners-nongovernmental_organ.html

⁵⁴ Global Environment Facility, Instrument for the Establishment of the Restructured GEF, p. 19, par 23

may include: international or regional financial institutions; national financial institutions; and private financial institutions. Since the World Bank has been appointed an interim trustee for three years, the issue of open bidding can apply at the appropriate time when the appointment of a permanent trustee is addressed.

A related consideration is the **scope of the trustee's functions vis-à-vis the fund board and other entities** (e.g. the secretariat). In most fund instruments, the trustee performs a well-defined fiduciary role (i.e. like a banker) under the instructions of the operating entity/fund board (i.e. its client). The specific responsibilities of the trustee are usually elaborated further an agreement between the operating entity and the trustee.

In some cases, the trustee is given a broader responsibility. In the case of the GEF, for example, the World Bank as trustee has the function of “mobilization of resources for the Fund and the preparation of such studies and arrangements as may be requested for this purpose”.⁵⁵ In the case of the Adaptation Fund, the trustee has the additional function of monetizing the Certified Emission Reductions. In other funds, such as the Global Fund, the Chair of the Board and not the trustee plays a significant role in mobilizing finances.

In the case of the Multilateral Fund, a UN agency serves the role of a “fund treasurer” to receive and administer pledged contributions (including cash, promissory notes or bilateral assistance), and to disburse funds to the fund secretariat and the implementing agencies in accordance with the directive of the board. The function of treasurer is performed by UNEP in Nairobi and by a senior officer based in the fund secretariat. The treasurer attends each meeting of the board and is responsible for preparing: a status of contributions and disbursements for each meeting; the accounts of the fund as well as the reconciliation of the accounts on an annual basis; and any study requested by the board and/or by Meetings of the Parties to the Montreal Protocol, as relevant.⁵⁶

In the case of an enhanced set of institutions to operationalize the UNFCCC financial mechanism **the role of trustee should be clearly and narrowly defined to avoid conflicts of interests**, with other entities (including the Fund Board, Sub-committees, Secretariat and Technical Panels) providing other relevant functions. Such an approach enables the trustee to focus on its core task, and avoids concerns of the type that have been raised in the context of the World Bank, including the potential for conflicts of interests to arise where one institution is entrusted with multiple and overlapping functions including those of secretariat, trustee, implementing agency and/or co-financier. Just as few individuals would entrust their money to a banker who is also a beneficiary of the funds, or a seeker of co-financing or a provider of secretarial functions to those who determine how funds will be spent, so too donors and recipients alike should support a system that ensures functional independence and appropriate checks and balances.⁵⁷ Doing so helps to

⁵⁵ Global Environment Facility, *Instrument for the Establishment of the Restructured GEF*, p. 25, Annex B

⁵⁶ Multilateral Fund, *Institutional Arrangements*. http://www.multilateralfund.org/institutional_arrangements.htm

⁵⁷ Khor, Martin. “World Bank Climate Funds Under Fire From G77 and China” Third World Network, 3 April 2008. <http://www.twinside.org.sg/title2/finance/twninfofinance20080401.htm>

build trust in the system, and ensure that funds are managed well and directed to where they are most efficient and effective.

6. Relation between the GCF and other bodies and entities

The Cancun decision (Para 112) decided to establish a Standing Committee under the Conference of the Parties to assist the Conference of the Parties in exercising its functions with respect to the financial mechanism of the Convention in terms of improving coherence and coordination in the delivery of climate change financing, rationalization of the financial mechanism, mobilization of financial resources and measurement, reporting and verification of support provided to developing country Parties; Parties agree to further define the roles and functions of this Standing Committee.

The role of this new Standing Committee is to provide the function of strengthening coordination and coherence, improving the delivery of climate finance to developing countries, seeking to help mobilize financial resources, undertaking the MRV of finance function, and otherwise help to streamline and improve implementation of the UNFCCC financial mechanism.

A clear relationship between the Standing Committee and the GCF will have to be developed, to ensure accountability to Parties and establish a maintain a prominent role for the Fund Board, which would remain responsible for managing financial resources and for ensuring the coherence of other financial sources, under the guidance of any “new body” and the Conference of the Parties.

In a broader context, ensuring coherence of the Financial Mechanism and its operating entities, and other relevant bilateral, regional and multilateral channels, can help reduce overlap and redundancy, improve cooperation and synergy, and ensure that both the providers and recipients of financial resources get the most value from the available resources.

Of central importance is the **relationship between the Fund and other providers of resources**. Also important is the relationship between the fund and entities that support the implementation of funded activities. Defining these roles carefully, and managing them on an ongoing basis, is crucial to the fund’s success.

The Convention provides some guidance on these issues. It distinguishes, for example, between the role of the financial mechanism and its operating entities in providing funding for the implementation of the Convention, and funding “related to” implementation of the Convention through “other channels” outside the Convention (Article 11).

It states the Conference of Parties shall “seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11” (Article 7.2(h)). It also says that it and the entity or entities entrusted with the operation of the financial mechanism shall agree on arrangements to

determine:

... in a predictable and identifiable manner of the amount of funding necessary and available *for the implementation* of this Convention and the conditions under which that amount shall be periodically reviewed. (Article 11.3(d), emphasis added)

In relation to “other channels” the Convention says:

The developed country Parties *may also* provide and developing country Parties avail themselves of, financial resources *related to* the implementation of the Convention through bilateral, regional and other multilateral channels. (Article 11.5, emphasis added)

The Conference of Parties has emphasized the importance of coherence between financing provided through the Convention’s financial mechanism and financing related to implementation of the Convention through other channels. As noted in discussions of the sources of financing above, it has called for:

Consistency should be sought and maintained between activities (including those related to funding) relevant to climate change undertaken outside the framework of the financial mechanism and the policies, programme priorities and eligibility criteria for activities as relevant, established by the Conference of the Parties. (Decision 11/CP.1)

It is notable that **the Climate Investment Funds have explicitly included “sunset clauses” designed to avoid prejudging the outcome of UNFCCC negotiations**. As noted previously, the SCF Governance Framework states: “Recognizing that the establishment of the SCF is not to prejudice the on-going UNFCCC deliberations regarding the future of the climate change regime, including its financial architecture, the SCF will take necessary steps to conclude its operations once a new financial architecture is effective”. Parallel language is included in the CTF Governance Framework.

In relation to the GEF, modalities for determining its role on climate change would be required. Notably, the GEF was established as “an operating entity” (i.e. one among others) of the UNFCCC financial mechanism. **The GEF’s role could be refined to address a specific area or areas that are clearly defined to dovetail with a new Fund and other entities established under the authority of the Conference of Parties**. These could, for instance, include supporting specific groups of countries (e.g. continuing to provide financial resources to least developed countries through a reformed Least Developed Countries Fund). Or it could include focusing on a particular Thematic Area such as supporting capacity building.

Among the most concrete means for ensuring coherence is established by the Montreal Protocol. The Protocol establishes a “mechanism for the purposes of providing financial and technical cooperation” (Article 10.1, Montreal Protocol). This includes the Multilateral Fund (Article 10.2, MP), which operates directly “under the authority of the Parties” (Article 10.4, MP). **As well as requiring developed countries to provide assessed contributions “on the basis of the United Nations scale of assessments” (Article 10.6, MP) it also recognizes that**

many donors will also prefer to provide a proportion of financial resources through regional and bilateral sources. It therefore provides:

Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:

- (a) Strictly relates to compliance with the provisions of this Protocol;
- (b) Provides additional resources; and
- (c) Meets agreed incremental costs (Article 10.6, MP)

Parties to the Protocol have agreed that up to 20 per cent of the contributions of contributing Parties can be delivered through their bilateral agencies in the form of eligible projects and activities.⁵⁸

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⁵⁸ Multilateral Fund, *About the Multilateral Fund*, at http://www.multilateralfund.org/about_the_multilateral_fund.htm