This memo lays out a draft report by the COP25 Presidency to COP26, pursuant to decision 12/COP.25, on the matter of GCF P&Is. The draft report consists of a (unformatted) letter by the COP25 President to UNFCCC Parties, which includes an annex with a brief overview of the matter.

December 28, 2020

To all Parties to the UNFCCC

Through Decision 12/COP.25, the COP requested me to report about my engagement with the Secretary-General of the United Nations on the matter of granting privileges and immunities for the Green Climate Fund and its officials through a possible institutional linkage between the United Nations and the Green Climate Fund.

The annex to this letter contains a brief overview of this matter. It reflects relevant topics and ideas covered during that engagement, in the spirit of informing the consideration by the Conference of the Parties at its twenty-sixth session, as anticipated in paragraph 10 of decision 12/COP.25, and without prejudice of its outcome.

This report also takes into account the guidance offered by the Bureau of Conference of the Parties in its meeting of August 25, in which a specific consideration was given to minimize delays and maximize progress, in the context of the current pandemic.

Carolina Schmidt
President of COP25
Minister of Environment of Chile
Annex: Brief overview of the matter of granting privileges and immunities for the Green Climate Fund and its officials through a possible institutional linkage between the United Nations and the Green Climate Fund

1. Mandate

Through decision 12/CP.25, the Conference of the Parties at its twenty-fifth session encouraged the Board of the Green Climate Fund (hereinafter the GCF) to continue its efforts to ensure that the GCF enjoys privileges and immunities.

In the same decision, the Conference of the Parties took note of the engagement of the President of the Conference of the Parties with the Secretary-General of the United Nations on the matter of granting privileges and immunities for the GCF and its officials through a possible institutional linkage between the United Nations and the Green Climate Fund. This decision also requested the President to report on this engagement at its twenty-sixth session (November 2020).¹

Additionally, the Conference of the Parties decided to continue the consideration of this issue at its twenty-sixth session.²

The President of the Conference of the Parties at its twenty-fifth session conducted the engagement requested, exploring elements on the possible institutional linkage mentioned in the mandate. The information compiled and presented here aims at providing clarity on the matter, while avoiding prejudging any outcome that may result from the deliberation of the Conference of the Parties in Glasgow.

2. Background on the Privileges and immunities of the Green Climate Fund

Privileges and immunities for the GCF with respect to the Fund itself and the staff of the GCF Secretariat have been discussed by Parties of the Convention, including in the context of the negotiations that led to the establishment of the GCF. As a result of that negotiation, the Conference of the Parties at its seventeenth session adopted the Governing Instrument for the Green Climate Fund.

The GCF Governing Instrument³ provides that:

“7. In order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests.

8. The Fund will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund.”

The Conference of the Parties at its eighteenth session adopted decision 6/CP.18, which requested the Board of the GCF and the Republic of Korea to conclude the arrangements for hosting the GCF, and to ensure the necessary privileges and immunities are granted to the GCF and its officials. The GCF Headquarters

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¹ Decision 12/CP.25, p. 9
² Decision 12/CP.25, p. 10
³ Annex to the decision 3/CP.17
Agreement with the Government of the Republic of Korea provides that the GCF (the Fund and Officials) enjoy privileges and immunities in the Republic of Korea.

After the GCF was established, the GCF Board has had an ongoing consideration of the issue of privileges and immunities.

The GCF Board adopted decision B.08/24, whereby it specifically requested the Conference of the Parties to consider “recommending to the General Assembly of the United Nations that the General Assembly consider an institutional linkage between the United Nations and the Green Climate Fund that is consistent with the status of the Fund and the powers vested in the Board and a Secretariat that is fully independent and accountable to the Board, as stated in the Fund’s Governing Instrument, as approved by the COP in decision 3/CP.17.”

3. Status of bilateral agreements on privileges and immunities between developing country Parties and the Green Climate Fund

The Conference of the Parties at its twentieth session adopted decision 7/CP.20, which took note of GCF Board decision B.08/24 and urged developing country Parties to enter into bilateral agreements with the GCF based on the template to be approved by the Board of the Green Climate Fund, in order to provide privileges and immunities for the Fund.

As of 31 December 2019, the GCF has entered into bilateral agreements on privileges and immunities with 22 developing countries. In order to make this endeavor more efficient, the GCF has developed and used a template for Bilateral Agreements on Privileges and Immunities. The GCF reported to the Conference of the Parties at its twenty-fifth session that it is “currently pursuing negotiations with more than 100 countries, both developed and developing. Of this number, approximately 10–20 agreements under active negotiation.”

The GCF further reported that the challenges it faces “in operating without privileges and immunities [...] are a real risk to the ability of the GCF to deliver on its mandate.”

4. Some elements that might be relevant for further consideration of the matter.

The matter of a possible institutional link between the GCF and the United Nations is complex, in light of the processes and issues involved. This report observes that Parties hold different views on some of these topics.

As a result of the engagement requested by the Conference of the Parties, and without prejudice of the approach that it might take, there are certain elements that could inform that discussion.

a. Institutional Linkage between the Convention Secretariat and the United Nations

The information on the initial linkage with the UNFCCC Secretariat provides an example that some parties consider could be useful for the framing of the consideration of the matter.

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4 The GCF Headquarters Agreement is available at: https://www.greenclimate.fund/documents/20182/1246728/Headquarters_Agreement.pdf/13df1525-af90-456b-8d76-5b83be9b39d4

5 In addition to the GCF Headquarters Agreement with the Republic of Korea, bilateral agreements have been concluded with Antigua and Barbuda; Armenia; Barbados; Belize; Cook Islands; Georgia; Grenada; Guyana; Honduras; Kiribati; Micronesia (Federated States of); Montenegro; Namibia; Papua New Guinea; Saint Vincent and the Grenadines; Samoa; Solomon Islands; Tonga; Uruguay; Vanuatu; and Zambia.


7 Id, at Annex III, para. 6.
The Conference of the Parties at its first session adopted decision 14/CP.1, which decided that the Convention secretariat shall be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme.

Decision 14/CP.1 also provisionally accepted the arrangements proposed by the Secretary-General of the United Nations for administrative support to the Convention secretariat. These arrangements are spelled out in a Note by the Secretary-General of the United Nations on an institutional arrangement for the permanent secretariat, document FCCC/CP/1995/5/Add.4., which addresses the following issues: A. Head of the Convention secretariat; B. Personnel matters; C. Financial matters; D. Conference services; E. Procurement of goods and services; F. Provision and maintenance of office space; and G. Reimbursement to the United Nations for services rendered. The United Nations General Assembly adopted resolution 50/115, which endorsed the institutional linkage between the Convention secretariat and the United Nations, as advised by the Secretary-General and adopted by the Conference of the Parties.

b. Institutional linkage between the United Nations and the Green Climate Fund

Some Parties hold the view that an institutional linkage between the United Nations and the Green Climate Fund, including its assets and officials, is desirable to enable proper application of privileges and immunities. This view holds that this institutional linkage could be based on a similar, but not identical, institutional arrangement that links the United Nations with the Convention secretariat, as described above. Said institutional arrangement would need to be tailored to the features of the Green Climate Fund, including its independent governance, its Independent Units, and its dynamic use of financial instruments.


Some Parties take the view that the GCF could be recognized as a specialized agency under the United Nations Charter. This view takes note of the execution of the GCF Headquarters Agreement with the Republic of Korea, as well as bilateral agreements on privileges and immunities with several developing countries. Under this view, the GCF, including its assets and officials (including its Independent Units), should benefit from the privileges and immunities provided in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, once the relevant administrative procedures established in the 1947 Convention have been satisfied.

Other Parties hold the view that the GCF cannot be regarded as a specialized agency under the United Nations Charter because it was not established by a constitutive treaty. Under this view, the 1947 Convention could not apply.

d. 1946 Convention on Privileges and Immunities of the United Nations

Some Parties are of the view that an institutional linkage between the United Nations and the GCF could open the way to the application of the 1946 Convention on the Privileges and Immunities of the United Nations [hereinafter the 1946 Convention].

Other Parties hold the view that the 1946 Convention applies to Officials of the United Nations, and that in the absence of an institutional linkage that includes an arrangement for the Green Climate Fund secretariat (including the Independent Units), its staff could not be considered within the scope of the 1946 Convention.
Some Parties recall that the 1946 Convention in its Article V provides that “the Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. [...]”.

In this view, the Conference of the Parties could not adopt a decision requesting UNFCCC Parties, which are also Parties to the 1946 Convention, to apply the 1946 Convention to the GCF secretariat (including the Independent Units) because, under the 1946 Convention, the UN Secretary-General has the sole competence and prerogative to determine the categories of officials to which the 1946 Convention’s privileges and immunities apply.

5. Conclusion

Some Parties have raised concerns that the current approach for ensuring privileges and immunities for the Fund, its officials and staff might not be adequate. In this view, an arrangement for establishing an institutional linkage of the GCF Secretariat to the United Nations would help further enable the core functions of the GCF, in accordance with paragraphs 7 and 8 of its Governing Instrument.

Other Parties present the view that the independent juridical personality of the Green Climate Fund is a bar to establishing an institutional linkage between the United Nations and the Green Climate Fund. In this view, such an institutional linkage could compromise the independent governance of the Green Climate Fund, including the appointment of its Executive Director by the Green Climate Fund Board, and other prerogatives of the GCF Board of Directors.

The Conference of the Parties at its twenty-fifth session did not reach agreement on this matter, as divergent views could not reach a common understanding on the way forward.

The compilation of the background information contained in this report aims at providing more clarity of some of the different aspects that Parties may wish to consider at the Conference of the Parties at its twenty-sixth session.