The Green Climate Fund: Achieving Complementarity and Coherence among the UNFCCC Financial Institutions*

Erica Lyman**

<Abstract>

The Green Climate Fund has been heralded as a triumph of the climate change negotiations, but its true role in climate finance has yet to materialize. Significant questions remain unresolved and negotiations are mired in the same developed versus developing country controversies that have stymied other avenues of climate finance. With this legacy to overcome, the Green Climate Fund's full and robust operationalization and impact on climate change is unclear. In fact, participants left an initial meeting to mobilize resources for the Green Climate Fund in June of 2014 without so much as agreement on a target for future resource mobilization. Critical to achieving the goals of the Green Climate Fund and the broader, now fragmented, climate finance regime is a deep understanding of historical and entrenched debates as well as the governance and mechanics of the various UNFCCC financial institutions, and this paper provides a synthesis of this backdrop. Although it does not offer a panacea-type solution, this paper does suggest that alternative top-down or bottom-up approaches strategically employing the Standing Committee on Finance or Designated National Authorities, respectively, may at least represent pathways toward efficient and effective climate finance.

Key words: Green Climate Fund, Climate Finance, Climate Change, UNFCCC, Global Environment Facility

---

* Erica Lyman has participated actively in the climate change negotiations since 2009. Support for this article has been provided for by the Environmental Ministry of the Republic of Korea.

** Professor of Clinical Law at Northwestern School of Law at Lewis and Clark

Ⅰ. Introduction

The Green Climate Fund (GCF) began to take shape during the 15th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC)[1] in Copenhagen in 2009 when the developed countries agreed to "commit to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries."[2] The Copenhagen Accord further states that "[a] significant portion of such funding should flow through the Copenhagen Green Climate Fund."[3] While the Parties did not adopt the Copenhagen Accord, they included the GCF as a key element of the Cancun Agreements the following year.[4] However, the Cancun Agreements only specify that a significant portion of adaptation funding should flow through the GCF,[5] suggesting that other funds will also contribute adaptation financing. However, many Parties believe that the GCF should become the main conduit for all climate finance.[6] As a result, it remains unclear whether the GCF will become the

---

1) United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, S. Treaty Doc. No. 102-38 (1992), 1771 U.N.T.S. 107 [hereinafter UNFCCC].

2) UNFCCC, *Copenhagen Accord*, Decision 2/CP.15, FCCC/CP/2009/11/Add.1,¶ 8 (2010).

3) *Id.*

4) UNFCCC, *The Cancun Agreements: Outcomes of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention,* Decision 1/CP.16, ¶ 102 (Dist. Mar. 15, 2011) (designating Green Climate Fund as operating entity of the financial mechanism).

5) *Id.* ¶ 100 ("a significant share of new multilateral funding for adaptation should flow through the Green Climate Fund").

6) *See* Liane Schalatek et al., *Climate Finance Fundamentals - The Green Climate Fund*

primary or sole finance institution of the UNFCCC or whether it will be one of many other UNFCCC climate funds.

If the goal is to build the GCF into the primary channel for climate finance, climate negotiators must address two fundamental and related issues. First, the Parties must determine the role of the GCF in the context of other climate funds. Already, the number of bilateral and multilateral climate finance institutions "is confusing, cumbersome, and costly."[7] If the GCF is to become the primary or sole channel for climate finance, then the Parties and GCF Board have many strategic decisions to make with respect to its structure and operationalization. At a minimum, the Parties must consider harmonizing the GCF's relationships with various climate funds.[8]

Second, if the Parties decide to make the GCF the primary or sole source of climate finance, then they need to bring together developed and developing countries to agree on core management issues. Developed and developing countries have a long history of disagreement over many of the core issues of climate finance, including the source of funds, delivery modalities, and governance. The GCF must find solutions to these core management issues so that donor countries want to direct dedicated climate assistance to the GCF, and developing countries want to seek funding from the GCF. Because of the legacy of discord and differing intentions between developed and developing countries, the GCF may find it difficult to achieve this goal.

To help put the opportunities and challenges facing the GCF into context, this paper reviews the core debates over climate finance and examines the governance models, source of funds, and delivery modalities of the various climate finance institutions. Section II outlines and discusses the existing financial institutions of the UNFCCC, including the Global Environment Facility (GEF), the Least Developing Countries Fund (LDCF), the Special Climate Change Fund (SCCF),

---

(Feb. 2012), *available at* http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7595.pdf.

7) Liane Schalatek, A Matter of Principle(s) 24 (2011), *available at* http://www.boell.org/downloads/Matter_of_Principle(s)__Post-Cancun__FINAL.pdf.

8) UNFCCC, *Launching the Green Climate Fund*, Decision 3/CP.17, FCCC/CP/2011/9/Add.1, Annex, ¶¶ 33-34 (Dist. Mar. 15, 2012).

and the Adaptation Fund. Section III describes the governance structure of the GCF as it exists to date and highlights and analyzes some of the most critical unanswered questions for operationalization of the GCF. Section IV examines the Standing Committee on Finance (SCF) and its role in fostering complementarity and coherence within the climate finance network. Section V identifies the most critical aspects of the various financial institutions and examines the future of the regime as either a complex of climate finance entities or as a singular climate finance institution. In particular, Section V identifies two means of possibly achieving complementarity and cohesiveness—either through the Standing Committee on Finance as a top-down mechanism for strategic policymaking or through a bottom-up approach, wherein the Designated National Authorities (DNAs) coordinate and harmonize climate finance needs, priorities, and agendas. Section VI concludes that the most viable solution, given the political climate, is likely some combination of top-down and bottom-up approaches.

Ⅱ. Introduction to Other UNFCCC Financial Institutions

The history of the GEF and other UNFCCC financial institutions provides important background for understanding much of the debate concerning the GCF. In fact, the history of developed and developing countries trying to find solutions to climate finance issues has given rise to the GCF and stalled some of the most important decisions related to operationalizing the GCF. Thus, this section describes the governance structures of the GEF, the SCCF, the LDCF, and the Adaptation Fund. It also provides context to some of the most significant and longstanding debates regarding the management and operation of these funds.

1. The GEF

In 1991, the International Bank for Reconstruction and Development (World Bank) made arrangements with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) to establish the

Global Environment Facility (GEF).[9] The GEF began as a USD 1 billion pilot program within the World Bank.[10] Its original purpose was to "assist in the protection of the global environment" and promote sustainable development.[11] Today, the GEF is the world's largest public financial institution dealing with global environment issues.[12] Since 1991, the GEF has provided USD 12.5 billion in grants and leveraged over 58 billion USD in co-financing for over 3,690 projects in over 165 countries.[13]

The current structure of the GEF arose out of negotiations in conjunction with the 1992 United Nations Conference on Environment and Development (Rio Conference).[14] During the negotiations of the environmental agreements in the lead up to the Rio Conference, developed countries sought a consolidated fund that would serve all of the multilateral environmental agreements (MEA) in order to avoid conflicting mandates and duplicative efforts, whereas developing countries desired separate funds for each MEA so that the various COPs would retain much of the decision-making authority.[15] Some developing countries perceived the creation of the GEF as a preemption of these negotiations, and many were unhappy with the governance structure of the GEF.[16] As a result, the UNFCCC

---

9) Instrument for the Establishment of the Restructured Global Environment Facility, Global Environment Facility, Executive Directors' Resolution No. 94-2, Preamble(a) (October 2011) *available at* http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Instrument_Oct2011_final_0.pdf [hereinafter GEF Instrument];

10) Global Environment Facility, What is the GEF, GEF History, http://www.thegef.org/gef/whatisgef (last visited Feb. 16, 2014).

11) GEF Instrument, *supra* note 9, at Preamble(a).

12) Global Environment Facility, Areas of Work, GEF Establishes the Nagoya Protocol Implementation Fund, http://www.thegef.org/gef/Press_release/GEF_establishes_NPIF (last visited Apr. 22, 2014).

13) Global Environment Facility, What is the GEF, http://www.thegef.org/gef/whatisgef (last visited Feb. 16, 2014).

14) Farhana Yamin & Joanna Depledge, The International Climate Change Regime: A Guide to Rules, Institutions and procedures 256-266 (2004).

15) Yulia Yamineva & Kati Kulovesi, *Chapter 9: The New Framework for Climate Finance Under the United Nations Framework Convention on Climate Change: A Breakthrough or an Empty Promise?*, 21 IUS Gentium 191, 200 (2013).

16) Jake Werksmen, *Consolidating Global Environmental Governance* 3-4 (2003), *at* http://www.environmentalgovernance.org/cms/wp-content/uploads/docs/dialogue/oct03/papers/Werksm

negotiators only agreed to appoint the GEF as an interim operating entity of its financial mechanism.[17)]

Due to the divisiveness of the GEF, GEF stakeholders decided to begin a restructuring of the fund by taking it out of the World Bank and making it an independent institution.[18)] The purpose of restructuring was first to “establish the GEF as one of the principal mechanisms for global environment funding.”[19)] Second, developing countries, which did not have much say in the creation of the GEF,[20)] wanted a larger role in the GEF decision-making process.[21)] Finally, restructuring was meant to facilitate cooperation with the newly created UNFCCC and the Convention on Biological Diversity (CBD).[22)] The restructuring of the GEF facilitated its transition from interim operating entity of the financial mechanism under the UNFCCC to a permanent appointment.[23)]

(1) Structure of the GEF

The GEF comprises an Assembly, a Council, and a Secretariat, as well as a Scientific and Technical Advisory Panel (STAP).[24)] In addition, the GEF works closely with other multilateral bodies; these bodies are known as Implementing

an%20GEF.pdf.

17) *See* UNFCCC, *supra* note 1, at Art. 21.3; *see also infra* footnotes 59 – 62 and accompanying text.

18) Global Environment Facility, What is the GEF, GEF History, http://www.thegef.org/gef/whatisgef.

19) GEF Instrument, *supra* note 9, Preamble(c).

20) Luis Gomez-Echeverri & Benito Müller, *The Financial Mechanism of the UNFCCC: A Brief History*, 2 (April 2009), *available at* http://www.oxfordclimatepolicy.org/publications/documents/ecbiBrief-FMHistory.pdf.

21) GEF Instrument, *supra* note 9, Preamble(c).

22) GEF Instrument, *supra* note 9, Preamble(b).

23) *See* UNFCCC, *Review of the Financial Mechanism*, Decision 3/CP.4, FCCC/CP/1998/16/Add.1, ¶ 1 (Dist. 1999) (deciding that the GEF shall be an operating entity of the “financial mechanism referred to in Article 11 of the United Nations Framework Convention on Climate Change); *see also* Gomez-Echeverri & Müller, *supra* note 20, at 3 (describing intense political negotiations preceding the restructuring of the GEF but eventually the conversion of the GEF from an interim operating entity to an operating entity of the financial mechanism of the UNFCCC).

24) *GEF Instrument, supra* note 9, at ¶ 11.

Agencies.[25] The Assembly includes representatives of all 183 Participants in the GEF and it meets every three years.[26] The Assembly reviews the general policies and operation of the GEF and considers recommendations from the Council on whether to amend the GEF Instrument.[27] In this way, the Assembly is charged with big-picture and high-level oversight, but ultimately few decisions seem to rest with the Participants at large. Decisions to amend the GEF Instrument are taken by consensus.[28]

The Council is the GEF's main governing body and is charged with "developing, adopting and evaluating the operational policies and programs for GEF-related activities."[29] When making decisions, the Council takes under consideration the advice of the Assembly.[30] It also makes decisions in conformity, when relevant, with the guidance provided by the Conferences of the Parties of the conventions it serves.[31]

Among its many tasks, the GEF Council is responsible for overseeing the GEF Secretariat and cooperating with the GEF Trustee (i.e. World Bank) to "mobilize financial resources."[32] The Council comprises 32 Members (16 from developing countries, 14 from developed countries, and two from countries of central and eastern European and the former Soviet Union).[33] The Council meets semi-annually or more often if necessary.[34]

The Council takes decisions by consensus.[35] However, Members of the Council may require a formal vote on "any matter of substance" if "all practicable efforts by the Council and Chairperson have been made and no consensus appears

---

25) *See infra* footnotes 45-48 and accompanying text.
26) *GEF Instrument, supra* note 9, at ¶ 13.
27) *Id.* at ¶ 13 - 14.
28) *Id.* at ¶ 14(d).
29) *Id.* at ¶ 15.
30) *Id.*
31) *Id.*
32) *Id. at* ¶ 21.
33) *Id. at* ¶ 16.
34) *Id. at* ¶ 17.
35) *Id. at* ¶ 25(b).

attainable."[36] Formal votes use a "double-weighted majority" approach, which means that a decision requires the affirmative votes of at least 60 percent of the total number of Participants and affirmative votes of Participants having contributed at least 60 percent of the total contributions to the GEF Trust Fund.[37] Because of the double-weighted majority system, the Participants that contribute the most essentially have veto power over the Council's decision-making.[38] The United States, Japan, and Germany contribute more than 40 percent of the total contributions.[39] This means if these three countries were to vote in unison they could stop any measure, even with 180 Participants in favor of the measure. This voting structure frustrates developing countries because they believe their views could be marginalized, even when decisions may concern their funding needs. Ultimately, the threat of a developed country veto probably prompts compromises that leave developing countries unhappy and feeling disenfranchised.[40]

The GEF Secretariat is charged with a broad range of administrative tasks, as well as tasks that could be considered substantive, including implementing the

36) *Id. at* ¶ 25(b).

37) *Id. at* ¶ 25(c) Each Council member casts the votes of the Participants that he or she represents. *Id.* at ¶ 25(c)(ii). Paragraph 25(c)(iii) specifies the calculation of "total contributions":

> For the purpose of voting power, total contributions shall consist of the actual cumulative contributions made to the GEF Trust Fund as specified in Annex C (Attachment 1) and in subsequent replenishments of the GEF Trust Fund, contributions made to the GEF, and the grant equivalent of co-financing and parallel financing made under the GEF pilot program, or agreed with the Trustee, until the effective date of the GEF Trust Fund. Until the effective date of the GEF Trust Fund, advance contributions made under paragraph 7(c) of Annex C shall be deemed to be contributions to the GET.

Id. at para. 25(c)(iii).

38) Luis Gomez-Echeverri & Benito Müller, *supra* note 20, at 3 ("current mixed voting system (proportionate to the number of countries and the size of the contribution) gives *de facto veto* power to the largest donors in the thus far exclusively consensus-based decision-making of the GEF").

39) GEF Secretariat & World Bank as Trustee, Summary of Negotiations: Fifth Replenishment of the GEF Trust Fund, GEF/A.4/7, 148, at http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF-A.4-7%20Summary%20of%20Negotiations%20of%20the%20Fifth%20Replenishment%20of%20the%20GEF_0.pdf (2010).

40) Gomez-Echeverri & Müller, *supra* note 20, at 3.

decisions of the Assembly and the Council and reviewing and reporting on the adequacy of arrangements with the Implementing Agencies.[41] The GEF Secretariat is also responsible for coordinating and cooperating with the Council, the Assembly, the GEF Trustee, and other Secretariats of international bodies.[42] The Council appoints the GEF CEO/Chairperson, who heads the Secretariat.[43] Although it operates independently, the World Bank administratively supports the Secretaria t.[44]

The GEF maintains formal relationships with the three entities that formed the initial GEF. These entitities, UNDP, UNEP, and the World Bank, are known as Implementing Agencies. Their role is largely to spur and enhance coordination and cooperation across their various spheres of competence.[45] The GEF Instrument states that the Implementing Agencies are "accountable to the Council for their GEF-financed activities," which should "promote the purposes of the facility."[46] The institutional linkages among the GEF and the Implementing Agencies mean that they are the lead in many of the GEF's programs and projects, working directly with the Parties of the UNFCCC, for example. The GEF Instrument indicates that this work should be "country-driven and based on national priorities designed to support sustainable development."[47] As the GEF has evolved, various other organizations have been allowed access to GEF funds for the design and implementation of projects.[48]

---

41) GEF Instrument, *supra* note 9, at ¶ 21.

42) *Id*. at ¶ 20.

43) *Id.* at ¶ 20(i).

44) *Id.* at ¶ 20.

45) GEF Instrument, *supra* note 9, at Annex D, para. 3. Annex D provides that [b]y designating UNDP, UNEP and the World Bank as the Implementing Agencies of the GEF, the Participants have recognized that the three agencies have key roles to play in the implementation of GEF-financed activities within their respective spheres of competence, and in facilitating cooperation in GEF-financed activities by multilateral development banks, United Nations agencies and programs, other international institutions, national institutions and bilateral development agencies, local communities, non-governmental organizations, the private sector and the academic community.
Id.

46) GEF Instrument, *supra* note 9, at ¶ 22.

47) *Id.* at Annex D, ¶ 5.

The Scientific and Technical Advisory Panel (STAP), comprising six experts who are internationally recognized in the GEF's focal areas,[49] assists the GEF as an advisory body.[50] The STAP's mandate is to "provide objective, strategic, scientific and technical advice on GEF policies, operational strategies, programs and on projects and programmatic approaches; and, maintain a database of institutions, networks and individual scientists to provide the necessary expertise and advice for the GEF."[51] It also interacts "in a complementary manner with other relevant scientific and technical bodies, particularly with the subsidiary bodies" of the various Conventions under which the GEF operates."[52] UNEP supports STAP and provides the STAP Secretariat, but the GEF Council provided the guidelines and criteria for the establishment of STAP.[53]

(2) Relationship with the COP

The UNFCCC treaty explicitly provides that the GEF functions as an interim operating entity of the financial mechanism.[54] The "financial mechanism" is meant to serve as "[a] mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology."[55] An operating entity of the financial mechanism facilitates funding to developing country Parties to assist in their implementation of the Convention.[56]

---

48) GEF Counsel Meeting, *GEF Minimum Fiduciary Standards: Separation of Implementation and Execution Functions in GEF Partner Agencies*, GEF/C.41/06/Rev.01, ¶ 1, note 1 (2011). Some of these entities are allowed direct access and these are called "GEF Agencies"; other entities are allowed to request and receive funds directly but do not have "direct access." Global Environment Facility, *Glossary of terms and descriptions Relating to the Accreditation of GEF Project Agencies* (June 2011), *available at* http://www.thegef.org/gef/node/4619.

49) Global Environment Facility, Scientific and Technical Advisory Panel (STAP).http://www.thegef.org/gef/STAP.

50) GEF Instrument, *supra* note 9, at ¶ 24.

51) Global Environment Facility, Scientific and Technical Advisory Panel (STAP), http://www.thegef.org/gef/STAP.

52) *Id.*

53) GEF Instrument, *supra* note 9, at ¶ 24.

54) UNFCC, supra note 1, at Art. 21.3.

55) UNFCC, supra note 1, at Art. 11.1.

As described above, the relationship between the GEF and the UNFCCC was contentious during the UNFCCC negotiations. The relationship embodied in the text of the Convention reflects a compromise: the GEF is appointed as an interim operating entity of the financial mechanism, and it "shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria."[57] This compromise reflects both the developed countries' belief that the GEF was the best choice to achieve coherence among the multiple entities involved in environmental financing at the time and the developing countries' desire to have the COP play at least a meaningful role in governance of the financial mechanism. In 1998, at the fourth Conference of the Parties (COP) to the UNFCCC, the GEF received permanent status as an operating entity.[58] The GEF was the sole operating entity of the financial mechanism until the COP determined in 2011 that the GCF would also serve as an operating entity.[59]

The official relationship between the GEF and the COP is outlined in a Memorandum of Understanding (MOU),[60] negotiated by the COP and GEF Council. The MOU gives meaning and effect to the idea that the GEF functions "under the guidance of and [shall] be accountable to the COP."[61] However, despite the importance of the links to accountability and the guidance of the COP, the MOU outlines only the most basic of terms and hardly suffices to ensure that the GEF is truly operating under the guidance of the COP.[62]

As for the role of the COP in GEF governance, the MOU reiterates that the COP will provide guidance and clarifies that such guidance will be shared with

---

56) UNFCC, supra note 1, at Art. 4.3; UNFCCC, Finance, http://unfccc.int/cooperation_and_support/financial_mechanism/items/2807.php.

57) UNFCCC, *supra* note 1, at Art. 11.1.

58) UNFCCC, *Review of the financial mechanism*, Decision 3/CP.4, FCCC/CP/1998/16/Add.1 (Dist. 1999).

59) Decision 3/CP.17, *supra* note 8.

60) UNFCCC, *Memorandum of Understanding between the Conference of the Parties and the Council of the Global Environment Facility*, Decision 12/CP.2, Annex, FCCC/CP/1996/15/Add.1 (Oct. 29, 1996) [hereinafter UNFCCC-GEF MOU].

61) *Id.* at Annex, ¶ 2.

62) Luis Gomez-Echeverri & Benito Müller, *supra* note 20, at 4 (2009).

the GEF Council after each meeting of the COP.[63] In order to provide some accountability, the GEF must report annually to the COP regarding all GEF-funded, UNFCCC-related activities.[64] Also related to accountability, the COP is charged with periodically reviewing and evaluating the effectiveness of the GEF in fulfilling the terms of the Convention.[65] Crucial to the negotiations was the issue of reconsideration of GEF funding decisions. The MOU resolves this by allowing a Party to notify the COP that it believes that a decision was taken that does not conform to the guidance provided.[66] Finally, the MOU was thought to resolve the contentious issue of which entity determines how much funding is necessary to fulfill the terms of the Convention by providing that the Council and the COP will make the determination jointly.[67]

From the start of the relationship, problems have existed reconciling GEF independence with UNFCCC guidance and goals.[68] This is a result of both the independence of the GEF and a failure of the UNFCCC to provide proper guidance.[69] Developing countries fought hard for the COP to contribute to GEF governance, but the substance of the actual guidance in the MOU and subsequent decisions is insufficiently explicit, leaving much to GEF discretion.[70] In large part, this is due to the requirement to take COP decisions by consensus, one of the very reasons why the developing countries fought for a unique financial mechanism for the UNFCCC and wound up with the compromise it did.

(3) GEF Trust Fund

As noted below, the GEF administers a number of climate change funds, but the fund that finances the financial mechanism of the UNFCCC is the GEF Trust

63) UNFCCC-GEF MOU, *supra* note 60, at ¶ 3.
64) *Id.* at ¶ 6.
65) *Id.* at ¶ 12.
66) *Id.* at ¶ 5.
67) *Id.* at ¶ 9.
68) Gomez-Echeverri & Müller, supra note 20, at 3.
69) *Id*.
70) *Id.*

Fund. Because of the lingering nature of certain debates related to the GEF and because of the important lessons to be learned from the GEF, this section describes both how and from which countries the GEF receives contributions, as well as how it disburses those funds and to which countries. In addition, this section draws attention to important unresolved issues in the negotiations of the GCF, such as the determination of "incremental costs" and which entity determines the amount of funding necessary for fulfillment of climate change objectives.

1) Contributions

Donations to the GEF are made by Contributing Participants.[71] Currently thirty-nine countries compose the Contributing Participants to the GEF.[72] According to UNFCCC Article 4.3,

> developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources . . . needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article.[73]

Whereas Annex I includes countries that are considered developed, as well as those that were determined to be "economies in transition," Annex II lists just those twenty-five Parties that are considered "developed."[74] Countries such as the Republic of Korea, although not listed in Annex II, have contributed funds to the GEF.[75]

---

71) GEF Instrument, *supra* note 9, at ¶ 10

72) GEF, GEF-Administered Trust Funds, http://www.thegef.org/gef/trust_funds (last visited March 31, 2014).

73) UNFCCC, *supra* note 1, at Art. 4.3.

74) UNFCCC, *supra* note 1, at Annex II. One of the Parties listed is the European Economic Community.

75) *Id.*

Notably, Article 4.3 makes certain important distinctions. First, it states that those Parties with financial responsibilities must provide the "agreed full costs" of developing country compliance with their reporting obligations. Second, it states that developed Parties shall be responsible for the "full incremental costs" of developing countries' other commitments, including implementing measures to mitigate climate change, adapting to climate change impacts, and incorporating climate change considerations into national policies, among others.[76] The distinction between "full agreed costs" and "full incremental costs" is an important one, and intense negotiations and disagreement have ensued over the meanings of these phrases.

UNFCCC Article 11.3(d) requires that the COP and the operating entity of the financial mechanism make arrangements for the "determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention."[77] Developing countries proposed that the COP, rather than the developed country Parties or the GEF, should make this determination.[78] However, developed Parties, not surprisingly, thought the GEF should play a role in making this determination—in part because the relevant provision of the Convention text states not just that a determination be made as to the scale of resources necessary for implementation but also as to the amount of money available from developed Parties. The MOU reflects compromise in that it says that the GEF and the COP will jointly determine aggregate funding requirements. In practice, however, it appears that the GEF Secretariat and the Trustee, i.e. the World Bank, ultimately propose funding scenarios based on their understanding of what donors are willing to contribute.[79] The GEF has followed this "process" despite COP guidance stating that, prior to each GEF replenishment, the COP will assess the funding needed by developing countries.[80] Largely due to

---

76) UNFCCC, *supra* note 1, at Art. 4.1.

77) UNFCCC, *supra* note 1, at Art. 11.3(d).

78) Yamin & Depledge, *supra* note 14, at 267.

79) Gomez-Echeverri & Müller, *supra* note 20, at 6.

80) UNFCCC, *Annex to the Memorandum of Understanding on the determination of funding necessary and available for the implementation of the Convention*, Decision 12/CP.3, FCCC/CP/1997/7/Add.1 (Mar. 25, 1998).

having to reach consensus between the recipient and donor countries, the COP has never been able to propose concrete numbers.[81)]

The determination of what constitutes an "incremental cost" has also been controversial. According to certain experts, the use of the term "incremental" was meant to capture two ideas: first, that the developing countries themselves would be responsible for the baseline costs associated with development and, second, that any additional cost associated with the choice of a development alternative that would have global impact, such as greenhouse gas mitigation, should be financed by developed Parties.[82)] Although hard-fought initially, the Parties appear to have tacitly accepted it as a principle of the Convention's financial mechanism. Instead, developing and developed countries disagree over more pragmatic aspects, such as who determines the incremental cost and how it is determined. This disagreement is important because identifying the incremental costs of a project is a difficult task that can radically alter the scale of necessary funding.[83)] The language of the Convention fails to provide any sort of practical solution, showcasing instead strategic constructive ambiguity—the Convention provides that developed Parties will fund the "agreed full incremental cost."[84)] During the negotiations of the text, developing countries tended to want their "full incremental costs" covered, while developed countries argued for language that read "agreed incremental costs," suggesting that donors had a say in the financial scale of projects.[85)]

As it stands now, the GEF itself largely determines what constitutes an incremental cost, but the COP and the GEF have engaged in long-standing negotiations over the nature of incremental costs. As one commentator points out,

---

81) *See e.g.*, UNFCCC, *Assessment of funding to assist developing countries in fulfilling their commitments under the Convention*, Decision 9/CP.10, FCCC/CP/2004/10/Add.1, ¶ 1 (Apr. 19, 2005) (providing that the assessment report compiled by the GEF Secretariat and Trustee constitutes the COP's input for the fourth replenishment period).

82) GEF Council, *GEF Operational Strategy*, GEF/C.6/3, ¶ 1.16 (1995).

83) *See* Daniel A. Bodansky, *The United Nations Framework Convention on Climate Change: A Commentary*, 18 Yale J. Int'l L. 451, 455 (1993) (noting the difficulty of determining what constitutes an incremental cost).

84) UNFCCC, *supra* note 1, at Art. 4.3 (emphasis added).

85) Bodansky, *supra* note 83, at 526, n. 456 (highlighting the constructive ambiguity of the provision).

> [a]lthough appearing technical in nature, the issue of incremental costs raises politically sensitive issues about the sustainable development pathways developing countries can or should follow. The subjectivity inherent in the complex calculation of incremental costs, and the frustration this has generated amongst recipients, has meant that since the Convention's adoption, the COP, and the GEF, have been engaged in a continuing round of rule development.[86]

While the COP has provided guidance regarding incremental costs, this guidance reflects largely political sentiment rather than technical input into the actual incremental cost calculations.[87]

2) Disbursement of Funding

A number of key issues pertain to allocation of funding by the GEF for UNFCCC projects. Again, these key issues are rife with developed versus developing country discord, and many of these issues are now key issues in GCF negotiations. As noted above, the issue of "incremental costs" is one of central concern as it affects how much funding a project in a developing country is eligible to receive. Additionally, GEF Participants and UNFCCC Parties have struggled with eligibility and prioritization, the modes of access to funding, and the priorities of donor versus recipient countries.

Receipt of GEF funding depends on a Convention's eligibility requirements, coupled with allocation and eligibility determinations made by the GEF.[88] One of the most significant factors is the way in which the GEF decides to allocate funding among its participants. During the fourth replenishment cycle, which ran from 2006 to 2010, the GEF employed the "Resource Allocation Framework" (RAF).[89] The RAF was viewed as favoring the sensibilities of donor countries because it used indicators to assess each recipient country's potential to generate

86) Yamin & Depledge, *supra* note 14, at 278.

87) *See id.* at 278-279 (describing the early history of "incremental cost" negotiations between the COP and the GEF).

88) GEF Instrument, *supra* note 9, at ¶ 9(a).

89) *See* GEF, Resource Allocation Framework (RAF), http://www.thegef.org/gef/RAF.

global environmental benefits and their capacity to successfully implement GEF projects.[90] Many developing countries found the linkage between eligibility and performance to be problematic because this would necessarily mean that funding access would continue to skew toward middle-income developing countries with established frameworks for managing international financing.[91] Additionally, many developing countries felt that the RAF was merely a disguised means of assessing incremental costs by prioritizing recipient countries and projects that would yield the greatest global environmental benefit—a calculus that again seems to favor the middle-income developing countries.[92]

In reaction to this dissatisfaction and to a GEF review of the RAF, the GEF adopted a new allocation framework for its fifth replenishment cycle (2010 to 2014) called the System for the Transparent Allocation of Resources (STAR). Although performance indicators were one of the most contentious issues with the RAF, the STAR continues to employ them; however, it does so along with other indicators that are meant to ensure that those developing countries that need resources to build capacity are not marginalized.[93] Instead of disbursing all funds to global issue areas generally, the STAR employs a national allocation system, meaning that eighty percent of funds available for climate change (one of the global issue areas) were given to countries directly for reallocation.[94] Another

---

90) *Id.*

91) *See* International Law and Developing Countries: Essays in Honour of Kamal Hossain 134-35 (Sharif Bhuiyan, et al. eds., 2014) (explaining that because of the developing countries' dissatisfaction with the GEF's RAF, they urged for a different model when negotiating the Adaptation Fund).

92) *See* Gomez-Echeverri & Müller, *supra* note 20, at 3.

93) *See* GEF, System for Allocation of Resources (STAR), http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_STAR_A4_april11_CRA.pdf.

94) *See* Karen Orenstein, et al., *The Green Climate Fund's "No-Objection" Procedure and Private Finance: Lessons Learned from Existing Institutions*, 17 (no date), http://www.ips-dc.org/reports/the_green_climate_funds_no-objection_procedure_and_private_finance_lessons_learned_from_existing_institutions (follow hyperlink to "Download Green Climate Fund No Objection Procedure and Private Finance") (describing the shift from RAF to STAR). A GEF document says the following:

As per the replenishment agreement, the overall focal area envelopes for GEF-5 are set at $1,210 million for biodiversity, $1,360 million for climate change, and $405 million for land degradation. The focal area set asides, which include contributions to enabling significant change is that developing countries can access funding for their reporting obligations through a separate allocation of funding.[95] Some countries and commentators have criticized the STAR program because it sets caps on funding for countries. In cases where caps were reached, commentators have argued that STAR has been counterproductive to achieving efficient global environmental benefits.[96]

In addition to allocation, how funds are accessed has charged developing and developed country tensions. The GEF model has historically been structured around "indirect access"—in other words, only certain multilateral organizations were accredited to apply for and receive funds (i.e. the Implementing Agencies and later the Executing Agencies).[97] "Indirect access" describes the traditional mode of GEF funding access, and it remains the most common form of access. While it may begin with a project proposal by an "eligible individual or body (e.g., a domestic government agency, NGO, private company, or multilateral fund)," the proponent works with an Implementing Agency and ultimately the host country to develop the project and apply to the GEF for funding.[98] A "focal point" within each country serves as a gatekeeper and must approve each project before it is eligible for funding.[99] The national focal point is intended to provide country ownership and recognition of national-level priorities.

---

activities, global and regional activities, and sustainable forest management (SFM), amount to 20 percent of these allocations. The resultant amounts after these set asides are taken out and therefore the amounts available for national STAR allocations are $968 million for biodiversity, $1,088 million for climate change, and $324 million for land degradation.

GEF, GEF-5 Initial Star Allocations (Jul. 1, 2010), http://www.thegef.org/gef/sites/thegef.org/files/documents/c38-inf8-rev1-final.pdf.

95) *See* GEF, System for Allocation of Resources (STAR), http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_STAR_A4_april11_CRA.pdf.

96) *See* Benito Müller, FEATURE: How will the Green Climate Fund allocate its money? All you wanted to know but were afraid to ask (Blog), http://cdkn.org/2014/01/how-will-the-green-climate-fund-allocate/.

97) *See supra* notes 44 – 47 and accompanying text; *see also* Berliner, et al., *Enhancing Direct Access to the Green Climate Fund*, 2 (June 2013), http://cdkn.org/2013/06/report-enhancing-direct-access-to-the-green-climate-fund/ (defining "indirect access").

98) Orenstein, *supra* note 94, at 16.

99) Orenstein, *supra* note 94, at 16.

The second mode for accessing funds is "direct access"—an idea novel to the GEF as of 2011, though, as discussed below, introduced to the international financial community as one of the Adaptation Fund's innovations in 2007.[100) During negotiation of the GEF's fifth replenishment cycle, developing countries pushed for a more streamlined access process, in part out of concern that Implementing and Executing Agencies were absorbing significant amounts of project funding for administrative costs. As such, since 2011, the GEF has begun a process to accredit a handful of institutions to serve as Project Agencies.[101) Accreditation occurs in two stages and requires demonstration of high fiduciary standards, as well as environmental and social safeguards for project design, management, and execution.[102) In 2011, 11 institutions were vetted and progressed to the second stage of accreditation; however, as of early 2014, it appears that full accreditation remains incomplete for these 11 institutions and that the GEF has decided to hold off reviewing any further institutions until it completes the second stage of review for these institutions.[103) Only limited types of projects qualify for direct access, including those for the preparation of a national portfolio formulation document or for preparation of reports to Conventions (National Communications in the case of the UNFCCC).[104)

2. The Least Developed Countries Fund and the Special Climate Change Fund

100) Climate & Development Knowledge Network, *Enhancing Direct Access to the Green Climate Fund*, 1 (June 2013), http://cdkn.org/2013/06/report-enhancing-direct-access-to-the-green-climate-fund; Lily Uy Hale, GEF, *How to Access GEF Trust Fund*, http://www.thegef.org/gef/sites/thegef.org/files/eventfiles/9-AccessGEFTrustFund.pdf.

101) Among the types of agencies eligible are national institutions, regional organizations, civil society organizations/non-governmental organizations, United Nations specialized agencies and programs, and other international organizations. *See* GEF, Accreditation of GEF Project Agencies, http://www.thegef.org/gef/agencies_accreditation.

102) Laura Druce, et al., *Policy Brief: Key Messages on Direct Access to International Climate Funds from Participants of the NCFISP*, 3 (Jul. 2013), http://fs-unep-centre.org/sites/default/files/project/1/policy_brief_direct_access_0.pdf.

103) *See* GEF, Accreditation of GEF Project Agencies, http://www.thegef.org/gef/agencies_accreditation.

104) Hale, *supra* note 100, at 8.

The GEF administers three trust funds that are creations of the UNFCCC Parties, the Least Developed Countries Trust Fund (LDCF), the Special Climate Change Trust Fund (SCCF), and the Adaptation Fund of the Kyoto Protocol.[105] The Parties established the LDCF and SCCF because they believed that "there is a need for funding, including funding that is new and additional to contributions which are allocated to the climate change focal area of the Global Environment Facility and to multilateral and bilateral funding."[106]

The GEF administers both the LDCF and SCCF by providing decision-making functions and secretariat services.[107] The GEF Council acts as the LDCF/SCCF Council and, as such, serves as the main governing body for both the LDCF and SCCF.[108] The COP provides the GEF with guidance for administering the LDCF and SCCF.[109]

(1) Least Developed Countries Fund

The LDCF primarily focuses on adaptation. It assists the Least Developed Countries (LDCs) in preparing and implementing national adaptation programmes of action (NAPAs), which identify areas of climate change-related adaptation needs.[110] Specifically, its goal is to fund the additional costs of adapting to the adverse effects of climate change.[111] Importantly for developing countries, neither the principle of incremental costs nor the STAR methodologies apply to the LDCF.[112]

105) GEF, GEF-Administered Trust Funds, http://www.thegef.org/gef/trust_funds.

106) UNFCCC, *Funding Under the Convention*, Decision 7/CP.7, FCCC/CP/2001/13/Add.1, ¶ 1(a) (Dist. 2001).

107) GEF, GEF-Administered Trust Funds, http://www.thegef.org/gef/trust_funds (last visited Apr. 23, 2014).

108) UNFCCC, *An overview of the mandates, as well as the progress of work under institutions, mechanisms and arrangements under the Convention*, FCCC/ADP/2013/INF.2, ¶¶ 99, 102 (Dist. 2013) [hereinafter *An overview of the mandates*].

109) *Id.*

110) Bonizella Biagini & Saliah Dobardic, *Accessing Resources Under the Least Developed Countries Fund*, 7 (May 2011), http://www.thegef.org/gef/sites/thegef.org/files/publication/23469_LDCF.pdf [hereinafter *Accessing Resources Under the LDCF*].

111) *Id.*

112) *Id.* at 8.

It also differs from GEF funding in several other respects:

- LDCF projects are not required to have global benefits;
- LDCF projects must generate adaptation benefits;
- the LDCF approves projects on a rolling basis; and
- LDCF projects are funded according to "balanced access," (i.e. funding for NAPA implementation is available to all LDCs, not on a first-come, first-served basis).[113]

The LDCF is the only fund that assists in the preparation of NAPAs.[114] It also supports activities of the LDC Work Programme, which strengthens LDCs' ability to understand and adapt to climate change and supports their participation in and implementation of the UNFCCC and the Kyoto Protocol.[115] As of April 2014, the LDCF has provided USD 726.25 million for over 120 projects for preparation and implementation of NAPAs.[116] Only the GEF Agencies (Implementing Agencies and Executing Agencies) are eligible to seek funds from the LDCF to assist countries in the development, implementation, and management of adaptation projects and programs.[117]

(2) The Special Climate Change Fund

The Parties established the SCCF, which became operational in 2002, to finance "projects relating to adaptation; technology transfer and capacity building; energy,

---

113) *Id.*

114) *An overview of mandates*, *supra* note 108, at ¶ 102.

115) UNFCCC, *Implementation of Article 4, paragraphs 8 and 9, of the Convention (decision 3/CP.3 and Article 2, paragraph 3, and Article 3, paragraph 14, of the Kyoto Protocol)*, Decision 5/CP.7, FCCC/CP/2001/13/Add.1, ¶ 11(a) (Dist. Jan. 21, 2002); UNFCCC, Chronological evolution of the LDC work programme and introduction to the concept of NAPA, https://unfccc.int/adaptation/knowledge_resources/ldc_portal/items/4722.php.

116) GEF, *Behind the Numbers: A Closer Look at GEF Achievements* (Apr. 2014), *available at* http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Behind_the_Numbers_April25a-2014-CRA-lo_1.pdf.

117) *See* GEF, Progress Report for the Least Developed Countries Fund and the Special Climate Change Fund, GEF/LDCF.SCCF.15/03, ¶¶ 11, 24 (Oct. 6, 2013).

transport, industry, agriculture, forestry and waste management; and economic diversification."[118] The activities of the SCCF are meant to be complementary to other GEF resources allocated to climate change.[119] The SCCF has two active funding windows: an adaptation funding window (SCCF-A) and a technology-transfer funding window (SCCF-B).[120] The SCCF-A funding window supports actions in the following areas: water resources management; land management; agriculture, health, infrastructure development; fragile ecosystems (including mountain ecosystems); integrated coastal zone management; and climatic disaster risk management.[121] The SCCF-B funding window "focuses on the transfer of environmentally sustainable technologies, concentrating on, but not limited to, technologies to reduce emissions or atmospheric concentrations of greenhouse gases."[122]

SCCF funding is available to any non-Annex I Party.[123] Like the LDCF, the SCCF is distinct from GEF Funding in several ways:

- SCCF projects need not generate global benefits;
- SCCF funding is not allocated according to STAR; and
- SCCF projects do not follow the "incremental cost" principle.[124]

Despite these important differences, the SCCF, like the GEF, has generated tension between donor and recipient countries. Among these tensions are prioritization of projects, whether full-cost funding should be provided, and the scope of projects that are eligible for SCCF funding.[125]

---

118) Decision 7/CP.7, *supra* note 106, at ¶ 2; *see also* Bonizella Biagini & Saliah Dobardic, *Accessing Resources Under the Special Climate Change Fund,* 8 (May 2011), http://www.thegef.org/gef/sites/thegef.org/files/publication/23470_SCCF.pdf [hereinafter *Accessing Resources Under the SCCF*].

119) Decision 7/CP.7, *supra* note 106, at ¶ 2.

120) *An overview of the mandates*, *supra* note 108, at ¶ 98.

121) *Accessing Resources Under the SCCF*, *supra* note 118, at ¶ 6.

122) *Id.* at ¶ 7.

123) Decision 7/CP.7, *supra* note 106, at ¶ 1(b).

124) *Accessing Resources Under the SCCF*, *supra* note 118, at 8.

125) Yamineva & Kulovesi, *supra* note 17, at 202.

Funding demand continues to exceed the funding available, in part because the SCCF relies on voluntary contributions as opposed to negotiated replenishments like the GEF.[126] However, the SCCF has experienced a growth in its fund in recent years: As of April 2014, the SCCF has funded 58 projects, totaling USD 242.6 million.[127] Adaptation resources (i.e. SCCF-A) are in particularly high demand.[128]

(3) The Adaptation Fund

Like the LDCF and the SCCF, the Parties to the UNFCCC created the Adaptation Fund in 2001 as part of the Marrakesh Accords. Decision 10/CP.7 states that the Adaptation Fund shall "be established to finance concrete adaptation projects and programmes in developing country Parties that are Parties to the Protocol."[129] In 2007, the Parties to the Kyoto Protocol, which entered into force in 2005, completed the work of negotiating, drafting, and adopting the management structure and modalities of the Adaptation Fund.[130]

The GEF provides secretariat services, on an interim basis,[131] for the Adaptation Fund, with the World Bank serving as interim trustee, and the operating entity of the fund is an Adaptation Fund Board—a body distinct from the GEF and the World Bank.[132] The Adaptation Fund Board has legal capacity, meaning that it can fund projects directly rather than through intermediaries and it can enter into

126) *Id.* at 203.

127) *Behind the Numbers*, *supra* note 116, at 6.

128) GCF, Special Climate Change Fund, http://www.thegef.org/gef/SCCF.

129) UNFCCC, *Funding under the Kyoto Protocol*, Decision 10/CP.7, FCCC/CP/2001/13/Add. 1, ¶ 11(a) (Dist. Jan. 21, 2002)

130) *See generally* Kyoto Protocol, *Adaptation Fund*, Decision 1/CMP.3, FCCC/KP/CMP/2007 /9/Add.1 (Dist. 2008) (regarding the creation of the Adaptation Fund).

131) As of the 19th Meeting of the Adaptation Fund Board in December of 2012, the GEF CEO Dr. Naoko Ishii, confirmed the GEF's commitment to serve the AFB as the secretariat. *See* UNFCCC, Adaptation Fund Board, *Report of the 19th Meeting of the Adaptation Fund Board*, AFB/B.19/6/Rev. 1, 2 (2013), https://www.adaptation-fund.org/sites/default/files/AFB%2019%20Rev.1%20report.pdf. The Chair announced at this meeting that the Meeting of the Parties to the Kyoto Protocol (CMP) decided to extend the role of the GEF in providing the Secretariat services through 2014. *Id.* at ¶ 105.

132) *An overview of the mandates*, *supra* note 108, at ¶ 106.

contractual relationships.[133] The Board comprises 16 members—two from each of the five regional groups, plus one SIDS representative and one for the LDCs, as well as two additional representatives each from Annex I countries and non-Annex I countries.[134]

The governance structure of the Adaptation Fund is rife with compromise. In what is now a common storyline in climate finance negotiations, the developing countries pushed for the creation of an entirely independent body from the GEF and World Bank financial structures, but developed countries lobbied for the stability and known quantity that management by the GEF and World Bank would bring—and in large part, the balance of power toward the developed countries inherent in GEF and World Bank operations.[135] In one concession to developing countries, the Parties to the Kyoto Protocol agreed that decision-making should occur via a majority of developing countries.[136] In another compromise, the developing countries conceded to the GEF as interim secretariat, while the developed countries gave in to demands regarding the Fund's independence by agreeing to the Adaptation Fund Board.[137] Finally, unlike the GEF, the Adaptation Fund operates under the "authority and guidance," rather than "guidance" alone, of the COP serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), at least implying a more significant role of the Kyoto Protocol Parties in Adaptation Fund governance.[138]

The Adaptation Fund's primary source of funding is a two percent levy on Certified Emission Reductions (CERs) from Clean Development Mechanism projects.[139] Because the sourcing of funds is directly tied to the Clean

133) Kyoto Protocol, *Adaptation Fund*, Decision 1/CMP.4, FCCC/KP/CMP/2008/11/Add.2, ¶ 11 Dist. Mar. 19, 2009).

134) Decision 1/CMP.3, *supra* note 130, at ¶ 6.

135) *See* International Law and Developing Countries, *supra* note 91, at 136.

136) *See* Kyoto Protocol, *Adaptation Fund*, Decision 5/CMP.2, FCCC/KP/CMP/2006/10/Add.1, ¶ 3 (Dist. Mar. 2, 2007). If the Board members cannot reach consensus, then a decision can be taken by 2/3 of the Board members present at the meeting, on the basis of one vote per Board member. *See* Decision 1/CMP.3, supra note 130, at ¶ 12.

137) Decision 1/CMP.3, supra note 130, at ¶ 4.

138) Decision 5/CMP.2, *supra* note 136, at ¶ 1(e).

139) Adaptation Fund, About the Adaptation Fund, https://www.adaptation-fund.org/about. In

Development Mechanism, the Adaptation Fund is unique in that it does not rely on voluntary contributions of developed country Parties like the LDCF and SCCF does. When conceived, developing countries were happy with what seemed like a more predictable flow of resources; however, it appears that the Adaptation Fund is more dependent on voluntary contributions than expected. As a recent Adaptation Fund Trust Fund Financial Report makes clear:

> Since the start of the CER monetization program in May 2009, the Trustee has generated revenues of USDeq. 187.99 million through CER sales. The Trustee generated revenues of USDeq. 19.65 million from CER sales during calendar year 2012. As of December 31, 2012, cumulative donations to the Adaptation Fund amounted to USDeq. 134.5 million.[140)]

Because of the depreciation of the international carbon market, the Adaptation Fund faces a lack of funding. As a result, during the negotiations in Warsaw at COP19, a handful of developed countries pledged an additional USD 100 million to the Adaptation Fund.[141)]

One of the critical and most innovative elements of the Adaptation Fund is the ability for direct access to funding for projects. In 2007, the Kyoto Protocol Parties took a decision that "eligible Parties shall be able to submit their project proposals directly to the Adaptation Fund Board and that implementing or executing entities . . . may also approach the Adaption Fund Board directly."[142)]

---

decision 1/CMP.8, the Parties decided that for the second commitment period, the Adaptation Fund shall be further augmented through a 2 per cent share of the proceeds levied on the first international transfers of "assigned amount units" (AAUs) and the issuance of ERUs for Article 6 projects immediately upon the conversion to "emission reduction units" (ERUs) of AAUs or removal units (RMUs) previously held by Parties. UNFCCC, Meeting of the Parties to the Kyoto Protocol, *Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9 (the Doha Amendment)*, Decision 1/CMP.8, FCCC/KP/CMP/2012/13/Add.1, ¶ 21 (Dist. 2013).

140) UNFCCC, Subsidiary Body for Implementation, *Information on the Status of the Resources of the Adaptation Fund*, FCCC/SBI/2013/INF.2, Annex (Apr. 23 2013).

141) UNFCCC, *Long-term Climate Finance*, Decision 3/CP.19, FCCC/CP/2013/10/Add.1, ¶ 3 (Dist. 2014).

142) Decision 1/CMP.3, *supra* note 130, 7. Funds may also be accessed indirectly by

Subject to intense negotiations amongst the Parties to the Kyoto Protocol, the developing countries claimed a huge win.[143] Developing countries were troubled by perceived difficulties in accessing GEF funding and concerned that intermediaries, such as the multilateral implementing entities, absorbed significant amounts of funding in administrative costs.[144]

In addition to "direct access" itself, another layer of country ownership is built into the disbursement of Adaptation Funds: implementing and executing entities must receive prior approval from national governments to access Adaptation Fund s.[145] Recipient countries appoint a Designated Authority, whose role it is to endorse accreditation applications of relevant prospective implementing agencies.[146] These implementing entities may be national, regional, or international, but the role of National Implementing Entities (NIEs) is meant to be that of national level project coordinator, ensuring that projects meet national climate strategies.[147] However, control over the funds lies in part with the Adaptation Fund Board, which has established a set of criteria that any national government, implementing entity, or executing entity must meet to be eligible for funding.[148] The criteria are fiduciary standards much like those required by the GEF and include sound financial integrity and management, transparency, independence, and professional standards.[149] Despite the drive for innovative, streamlined access for developing countries, these criteria have been criticized as cumbersome and relatively few entities have actually been accredited.[150] Additionally, few, if any projects, have

multilateral or regional implementing entities. Yamineva & Kulovesi, *supra* note 15, at 205.

143) Yamineva & Kulovesi, *supra* note 15, at 205.

144) *Id.* at 205.

145) Adaptation Fund, Parties' Designated Authorities, https://www.adaptation-fund.org/page/parties-designated-authorities.

146) *Id.*

147) Druce, *supra* note 102, at 3.

148) Decision 1/CMP.3, *supra* note 130, at ¶ 30.

149) Druce, *supra* note 102, at 2.

150) In fact, at least 6 applicants have been denied accreditation. *See* Climate & Development Knowledge Network, *Enhancing Direct Access to the Green Climate Fund* (June 2013), http://cdkn.org/2013/06/report-enhancing-direct-access-to-the-green-climate-fund/ (last visited April 13, 2014).

been proposed directly by countries themselves, arguably undermining the goals of direct access.[151)]

Another important aspect of the Adaptation Fund is that, unlike GEF funding through the financial mechanism, the Adaptation Fund supports the full cost of adaptation projects. Frustrated with the incremental costs policy of the GEF, the developing countries sought a different disbursement model for the Adaptation Fund. In fact, the developing countries succeeded in ensuring that the Adaptation Fund would provide "[f]unding on [a] full cost basis of projects and programmes to address the adverse effects of climate change."[152)] For developed countries, agreeing to "full cost" funding may have been easier knowing that the goal was to capitalize and replenish the Fund primarily from the CER levy as opposed to their voluntary contributions. Although the Adaptation Fund faces an uncertain future, its features are heavily slanted toward developing country preferences, and, as a result, it may be difficult politically to either harmonize or integrate the Adaptation Fund with the GCF.

Ⅲ. The Green Climate Fund

As part of the Cancun Agreements, developed country Parties "commit[ed], in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries."[153)] According to the Cancun Agreements, "[t]his funding will come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance," and would be "scaled-up, new and additional, predictable and adequate."[154)] Moreover, the Parties

---

151) *See* United Nations Development Program, *Discussion Paper: Direct Access to Climate Finance: Experiences and Lessons Learned*, 9 (Nov. 2011) http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7479.pdf.

152) Decision 5/CMP.2, supra note 136, at ¶ 28.

153) Decision 1/CP.16, *supra* note 4, at ¶ 98

154) Decision 1/CP.16, *supra* note 4, at ¶¶ 97, 99.

decided that a “significant share of new multilateral funding for adaptation should flow through the GCF.[155] Of course, the 2020 financing goal and the broad contours of sourcing these funds is fraught with developed and developing country disagreement.

Additionally, like most of the financial decisions related to the UNFCCC, negotiation of the structure, organization, and decision-making approaches for the Green Climate Fund has been a protracted debate, entailing compromise between developed and developing countries and other institutional interests.[156] The Parties adopted a basic outline of the GCF’s existence in Cancun and spent the next few years shaping the GCF to the point that it is now officially “operational.”[157] However, much work remains to be done in terms of finalizing the decisionmaking processes and other aspects of the GCF. This section outlines the basic parameters of the GCF’s structure and highlights areas where decisions must still be made, and it broadly sketches the outlines of the various issues on the table regarding capitalizing and replenishing the GCF, though many of these issues remain subject to ongoing debate.

1. The Structure and Organization of the Green Climate Fund

(1) The Board

The Parties decided that a Board would comprise the core governing body of the GCF at the point of the GCF’s inception at COP16 in Cancun.[158] The Cancun Agreements and the Governing Instrument for the Green Climate Fund (Governing Instrument) set forth the basic structure and *modus operandi* of the GCF Board. The Cancun Agreements specify that the Board shall comprise

155) Decision 1/CP.16, *supra* note 4, at ¶ 100.

156) *See* Liane Schalatek & Smita Nakhooda, Heinrich Boll Stiftung, *Green Climate Fund*, Climate Finance Fundamentals 11, 1 (2012) http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7918.pdf (explaining the history of the Green Climate Fund).

157) *Id.*

158) Decision 1/CP.16, *supra* note 4, at ¶ 103 (“[T]he Fund shall be governed by a Board”).

twenty-four members, twelve members from developing countries and twelve members from developed countries, including representatives of U.N. regional groupings, as well as the small island developing States (SIDS) and least developed countries (LDCs).[159] Equal representation on the Board was a critical negotiation point for developing countries because they felt that other funds were weighted toward developed country ownership.

Each regional grouping elects its representative from among its members for a term of three years.[160] Each regional grouping also elects an alternate.[161] All Board members and alternates may attend the Board meetings. If the principal Board member attends the meeting, the alternate can only participate through the principal; however, if the principal member cannot attend the meeting, the alternate will serve as the member for that regional group.[162] Observer participation in Board meetings is limited: the Board chooses and invites two civil society representatives (one from a developed country and one from a developing country) and two private sector representatives (again, one from a developing country and one from a developed country).[163]

Adoption of the Governing Instrument at COP17 in Durban, South Africa paved the way for the election and appointment of the Board's first members,[164] and it set out the Board's role in GCF governance. Overall, the Board is tasked with operationalizing the GCF, including establishing prescribed bodies; adopting necessary operational guidelines; maintaining its functionality once operational, including ensuring capitalization and replenishing; approving funding; and managing the GCF's relationship with the Trustee.[165]

The Board's duties are extensive and currently its efforts have been directed toward ensuring that the GCF is funded and that it is able disburse funds

159) *Id.*
160) Decision 3/CP.17, *supra* note 8, at Annex, ¶¶ 9-11.
161) Decision 1/CP.16, *supra* note 4, at ¶ 103.
162) *Id.* at ¶ 103.
163) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 16.
164) UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties*, FCCC/CP/2012/5, ¶ 2.2 (2012).
165) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 18.

effectively. As a result, the Board is currently grappling with fundamental, yet contentious, decisions (these issues are introduced in later sections of this memo). The Board meets periodically throughout the year to make decisions for the GCF and is supported by a full-time Secretariat. The Board's decisions are made via consensus, but if consensus cannot be reached, the Board's Co-Chairs—one from a developing nation and one from a developed nation—may conduct a vote.[166] The Board has not yet fully finalized the voting procedure.

The Governing Instrument indicates that the GCF should interact with other financial mechanisms, other institutions, UNFCCC Committees, and experts.[167] The Board is responsible for initiating collaboration with these other entities.[168] According to the Board's meeting notes and its report to the COP, the Board has instructed the Interim Secretariat to invite the Global Environment Facility Secretary, the Adaptation Fund, the Multilateral Fund for the Implementation of the Montreal Protocol and the Climate Investment Funds "to take up observer status with the Green Climate Fund."[169] Also, the Board conducted a workshop with the Caribbean Development Bank and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on the topic of readiness.[170]

(2) The Secretariat

The Secretariat is designed to serve the everyday needs of the Board and manage the GCF's daily operations.[171] Initially, the Parties requested the UNFCCC Secretariat and the GEF Secretariat to work jointly to take the necessary administrative steps to establish an Interim Secretariat of the Green Climate Fun

---

166) Green Climate Fund, Meeting of the Board, *Revised Draft Additional Procedure of the Board*, GCF/B.01-13/02/Rev.01, Annex IX(I)-(II) (2013).

167) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 18(n).

168) *Id.*

169) Green Climate Fund, Meeting of the Board, *Decisions of the Board－Fifth Meeting of the Board*, GCF/B.05/23, item 8, ¶(f); UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties*, FCCC/CP/2013/6, ¶ 12(b) (2013) [hereinafter *2013 GEF Report to the COP*]

170) *2013 GEF Report to the COP*, *supra* note XX, at ¶ 31.

171) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 31.

d.[172] However, those interim arrangements terminated before COP19, and the Board established a fully independent Green Climate Fund Secretariat, based in the Republic of Korea.[173]

Like the Trustee, the Secretariat is accountable to the Board. The Governing Instrument lists the Secretariat's responsibilities, which are mostly administrative and logistical. The Secretariat is responsible for performance of all necessary administrative duties, specifically preparing reports on the Fund's activities, serving as a liaison between the Fund and any other cooperating agencies, developing the administrative budgets for the Secretariat and the Trustee, preparing the financing agreements for implementing entity relationships, assisting the Board with arranging replenishment for the GCF, and preforming any other responsibilities that the Board assigns, among other general tasks.[174] The Secretariat's role is likely to evolve with the needs of the GCF based on its progress and successes, as well as its challenges; the needs of the GCF Board; and the requests of the Parties.

(3) Independent Units on Evaluation, Integrity, and Grievance Redress

Based on the Governing Instrument, the Board is responsible for creating three unique mechanisms to ensure the integrity and accountability of the GCF. The "Independent Evaluation Unit" will periodically provide an "objective assessment of the results of the Fund, including its funded activities and its effectiveness and efficiency."[175] The purpose of this evaluation is to ensure that the GCF evolves based on lessons learned and to inform Board decision-making over time.[176] To ensure that the Board is responsive to any allegation or suspicion of fraud or corruption, the Governing Instrument calls for the creation of an "Independent Integrity Unit."[177] Additionally, the Board is tasked with establishing an "independent redress mechanism," which will be available to "receive complaints

---

172) *Id* at ¶ 18.
173) Green Climate Fund, Background, http://www.gcfund.org/secretariat/background.html.
174) *Id.* at ¶ 23.
175) *Id.,* at ¶ 59.
176) *Id.*
177) *Id.,* at ¶ 68.

related to the operation of the Fund."[178] Finally, the Governing Instrument calls on the Board to adopt environmental and social safeguards that reflect best practices.[179] Underlying each of these endeavors is the desire that the GCF operate as transparently as possible. At its 6th meeting, the Board adopted terms of reference for the Independent Evaluation Unit, the Independent Integrity Unit, and the independent redress mechanism.[180]

(4) The Trustee

The designation of a trustee for the GCF's funds was a critical issue during the negotiations of the GCF, and it is likely to continue to be a contentious issue. The developing countries had made known that they distrusted the World Bank, in particular the Bank's means of facilitating investment in developing countries.[181] In addition, the developing countries found problematic the influence of donor countries in World Bank policies and operations.[182] During the negotiations, the United States amplified this discontent by proposing that the World Bank actually house the GCF.[183] As a compromise, the Parties agreed to have the World Bank serve as an interim trustee and called for the GCF Board to conduct an "open, transparent and competitive" bidding process to select a permanent trustee.[184] In addition, the Governing Instrument calls for a review of the World Bank's role as Trustee three years into the GCF's operation.[185]

---

178) *Id.*, at ¶ 69.

179) Decision 3/CP.17, *supra* note 8, ¶ 65.

180) GCF, *Decisions of the Board – Sixth Meeting of the Board 19 – 21 February 2014*, GCF/B.06/18, 5 (Apr. 17, 2014).

181) Alexander Sarac, *Green Climate Fund: Future of Renewables and Infrastructure Financing – from Political Decision to Implementation*, 2 (2012), http://www.dlapiper.com/~/media/Files/Insights/Publications/2012/12/Green%20Climate%20Fund%20GCF/Files/Climate_Change_Alert_Renewables_Dec_2012/FileAttachment/Climate_Change_Alert_Renewables_Dec_2012.pdf.

182) *Id.* at 2.

183) *Id.* at 2.

184) Decision 3/CP.17, *supra* note 8, at ¶ 16.

185) *Id.* at Annex, ¶ 26.

(5) Relationship to the COP

UNFCCC Article 11 contemplates that the UNFCCC will have a financial mechanism, but instead of establishing such a mechanism, it merely provides definitional guidance.[186] During the negotiations leading up to the Rio Conference in 1992, developing and developed countries disagreed as to whether a single funding entity should be established to manage the fiscal aspects of each of the treaties under negotiation related to the global environment focal areas or whether the Parties to each convention should develop and manage unique funds.[187] The compromise is articulated in Article 11 of the UNFCCC. In this regard, Article 11 provides that the financial mechanism "shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. It shall be entrusted to one or more existing international entities."[188] Thus, as this language makes clear, it is important to distinguish between the entities that operate the financial mechanism and the financial mechanism itself, which can be defined as "the totality of legal, institutional and procedural arrangements that regulate and make possible the flow of financial resources mandated by the Convention."[189]

As discussed, the Parties have designated the GEF as an operating entity of the Convention's financial mechanism.[190] At COP16 in Cancun, the Parties also designated the newly established GCF as an operating entity of the Convention's financial mechanism.[191] However, despite years of working with the GEF and negotiating the relationship between the GEF and the COP, the Parties continue to struggle over how to structure the relationship between the GCF and the COP, demonstrating that this remains a deeply divisive issue for the Parties.

According to the Cancun Agreements and the Governing Instrument, the GCF

186) *See* Yamin & Depledge, *supra* note 14, at 265 - 266.
187) *Id.* at 265.
188) UNFCCC, *supra* note 1, at Art. 11(1).
189) Yamin & Depledge, *supra* note 14, at 283.
190) Decision 3/CP.4, *supra* note 23, at ¶ 1; Gomez-Echeverri & Müller, *supra* note 20, at 3.
191) Decision 1/CP.16, *supra* note 4, at ¶ 102.

"will be accountable to and function under the guidance of the Conference of the Parties."[192] While developing countries wanted the GCF to function under the authority of the COP—a stronger relationship to the COP—the compromise they struck was a larger role on the Transitional Committee, which the Parties created to begin the process of setting up the GCF.[193] To give effect to the terms of this arrangement, the GCF reports annually to the COP and the COP responds with guidance to which the GCF must respond.[194]

2. Core Issues Related to Operationalizing the GCF

Preparing the GCF for true operationalization, including the ability to receive, handle, and disburse funds, requires negotiating a significant number of core issues. First and foremost among these issues was whether the Board would agree to particular logistics for operation of the GCF before soliciting and receiving pledges of financial resources.[195] Eventually, the Board adopted a to-do list of eight priority issues. The eight priorities identified below have now been resolved sufficiently for the GCF to be "operational," though significant questions about the mechanics of the GCF remain:

1. establish the initial structure for the Fund and its Secretariat, its administrative policies, best-practice fiduciary principles and standards, and environmental and social safeguards;
2. establish a financial risk-management and investment framework;
3. establish initial results areas, core performance indicators, and results management framework;
4. establish procedures for accrediting national, regional and international

192) Decision 1/CP.16, *supra* note 4, at ¶ 102; Decision 3/CP.17, *supra* note 8, at Annex, ¶ 4.

193) Yamineva & Kulovesi, *supra* note 15, at 217.

194) UNFCCC, *Arrangements between the Conference of the Parties and the Green Climate Fund*, Decision 5/CP.19, FCCC/CP/2013/10/Add.1, Annex, ¶ 2–4 (Dist. 2014).

195) *See* Clifford Polycarp & Malaya Zumel, The Green Climate Fund: From Inception to Launch, blog http://www.wri.org/blog/green-climate-fund-inception-launch-0.

entities that will implement activities for the Fund or intermediate finance to such entities;

5. establish policies and procedures for the initial allocation of Fund resources, including results-based approaches;
6. establish initial proposal approval process, including criteria for program and project funding;
7. establish initial modalities for the operation of the Fund's mitigation and adaptation windows, as well as the Private Sector Facility; and
8. establish terms of reference of the Fund's independent units on evaluation, integrity, and grievance redress.[196]

The following sections provide some perspective on a number of these priority decisions, focusing specifically on those that give rise to the most heated debate between developed and developing countries and those that are likely to be important aspects of achieving coherence and complementarity amongst UNFCCC climate finance regimes.

(1) Sources of Funding

As noted above, the Cancun Agreements provide that developed country Parties will provide funds from public and private, bilateral and multilateral, and alternative sources. They will also provide scaled-up, new and additional, predictable, and adequate financing. The GCF Governing Instrument also provides that the GCF will cover both the "agreed full and agreed incremental costs" for activities supporting the goals of the GCF. Each aspect of this financial mandate is contested.

Perhaps one of the most important debates is the composition of GCF funding, in particular the ratio of private to public funding. While both developed and

[196] GCF, Report of the Fifth Meeting of the Board, GCF/B.05/24, Annex XXII, 81 (Feb. 21, 2014). As of the Board meeting in South Korea in May, all essential items regarding these priorities were agreed. *See* E3G, *What Was Decided at the Seventh Green Climate Fund Meeting and Where Does this Take Us?*, at http://www.e3g.org/news/media-room/What-was-decided-at-the-Seventh-Green-Climate-Fund-meeting-and-where-does-t.

developing countries understand that the financial needs of addressing climate change mitigation and adaptation in developing countries far exceeds the funding that developed countries are likely to be able to contribute through contributions to the fund, there is nonetheless a question of how much developed countries should contribute in order to satisfy the criterion that funding should be adequate. Developed countries claim that seeking close to USD 100 billion annually from public financing is unreasonable and that a significant portion must come from private sources. Related to this question is the debate regarding incremental versus full cost funding. According to the Governing Instrument, the GCF will cover both the “agreed full and agreed incremental costs” for activities supporting the goals of the GCF, but it remains unclear as to which projects will receive full-cost funding and which will receive only incremental funding.[197)]

In addition, Parties disagree on what constitutes “predictable funding.” Following on experience with the GEF model of replenishment cycles, the developing countries urge a similar approach for the GCF.[198)] While this approach does not necessarily collectively define what would constitute a developed Party’s required contribution, it would assist with an understanding of the funds available over definite time periods (e.g., a three-year time period). Developed countries, however, would rather see a more *ad hoc* mobilization framework in which the GCF’s publically funded portfolios are subject to wholly voluntary contributions.[199)] At its fifth meeting in October 2013, the Board approved an initial resource mobilization phase based on the *ad hoc* approach favored by developed countries, but which will transition to a formal replenishment process favored by developing countrie s.[200)] In some ways a model of replenishment cycles represents a compromise between developed and developing countries because it allows a developed country to pledge a unilaterally determined amount toward a cycle’s funding goal but then

197) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 35.

198) Third World Network, TWN Info Service on Climate Change, Green Climate Fund: Disagreement over Mobilizing Resources, http://www.twnside.org.sg/title2/climate/info.service/2013/climate130303.htm.

199) *Id.*

200) Green Climate Fund, Meeting of the Board, *Decisions of the Board—Fifth Meeting of the Board*, Decision B.05/17 (2013).

commit to delivering that amount as opposed to having it remain a voluntary goal.[201] How the GCF's replenishment cycles work together with the GEF's replenishment cycles remains to be seen, but this could eventually become a source of tension, in particular if donors are choosing and allocating funding between the two funds based on criteria that they prefer.

A final question regards how the GCF will raise private sector finance. As the Cancun Agreements recognize, private sector financing is likely to constitute some portion of the GCF's funding; however, developing countries are cautious about the private sector playing an outsized role in financing mitigation and adaptation projects. Politically, developing countries are concerned that emphasizing private sector finance deflects from developed countries' commitment to mobilize 100 billion USD per year by 2020.[202] Pragmatically, developing countries have concerns regarding the distribution of private sector funding and the role that LDCs and SIDS, especially, would play in leveraging private funds by attracting investments. For example, although leveraging private investment is contingent on creating enabling environments in developing countries, many suggest that such activities distort or detract from true developing country priorities and, importantly, are unlikely to serve adaptation needs.[203] As a result of these concerns, the GCF has not been able to agree on a plan for leveraging private finance, though it is contemplated that the Private Sector Facility, discussed below, will contribute to private resource mobilization.

(2) Fund Allocation and Delivery

According to the Cancun Agreements, the commitment of developed countries to

---

201) *See* Yamin & Depledge, *supra* note 14, at 269 (describing how the GEF replenishment cycle is "predictable").

202) *See* No Author, Green Climate Fund: A Background Briefing, 2, http://climatemarkets.org/wp-content/uploads/2013/10/GCF-5thMeeting-BackgroundBriefing.pdf ("many developing countries are concerned that this moves the goalposts, going back on agreements made in the UN Climate Convention that make developed countries responsible for financial and technology transfers to help address climate change.").

203) *See generally* Oscar Reyes, *Critical Issues for Channeling Climate Finance via Private Sector Actors*, http://www.academia.edu/3271143/Critical_issues_for_Channelling_Climate_Finance_via_Private_Sector_Actors.

provide new and additional financial resources should reflect a “balanced allocation between adaptation and mitigation.”[204] This is an important issue for developing countries that believe that mitigation projects usually trump adaptation projects in the allocation of climate finance. The Adaptation Fund, Least Developed Country Fund, and Special Climate Change Fund all reflect efforts to achieve balance or at least redirect attention to adaptation. However, none of these funds has led to a true fifty-fifty balance, nor have they led to the funding of adaptation activities at levels that are considered necessary for responsiveness.[205] In fact, in 2013, of all the money that flowed to climate change activities in developing countries, only six percent supported adaptation-related activities.[206] This history led to the demands that the GCF support a “balanced allocation” between mitigation and adaptation. Additionally, the Governing Instrument makes clear that the GCF is to have at least two “thematic funding windows”—one for mitigation and one for adaptation.[207]

In fact, at its February 2014 meeting, the GCF Board agreed to “aim for a 50:50 balance between mitigation and adaptation over time.”[208] While this statement reflects flexibility as to timeframes and level of true GCF commitment to adaptation, it is touted as a win for developing countries.[209] However, how this goal materializes in actual funding allocation is yet to be determined, although the Board did also agree to dedicate a projected floor of 50 percent of any initial adaptation allocation for the most vulnerable countries.[210] Again, although it is

---

204) Decision 1/CP.16, *supra* note 4, at Annex III, ¶ 1(c).

205) A recent World Bank study estimates that adaptation could cost approximately USD 70 to 100 billion annually between 2010 and 2050 at 2005 prices. The World Bank Group, *The Economics of Adaptation to Climate Change* 3 (Aug. 2010), *available at* http://siteresources.worldbank.org/EXTCC/Resources/EACC_FinalSynthesisReport0803_2010.pdf.

206) *See* Annaka Peterson Carvalho, Will the Green Climate Fund finally stop short-changing climate adaptation?, blog (Mar. 5, 2014).

207) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 37.

208) *Decisions of the Board – Sixth Meeting of the Board*, *supra* note 180, at 4.

209) *See* Annaka Peterson Carvalho, Will the Green Climate Fund finally stop short-changing climate adaptation?, blog (Mar. 5, 2014).

210) *Decisions of the Board – Sixth Meeting of the Board*, *supra* note 180, at 4.

unclear as to what these goals mean in terms of actual numbers, they do reflect a desire to increase funding to adaptation activities through the GCF.

A further allocation issue concerns whether to direct GCF funds to the private sector. Developed countries are of the mind that facilitating private sector project involvement is the surest way to leverage private sector finance and related private-sector driven market instruments, such as carbon markets credits, credit guarantees, subordinated debt, and equity, among others.[211] Developing countries have expressed concerns about the fairness, transparency, and priorities of private sector investments. These concerns have merit. First, private sector investments are more likely to fund larger enterprises in middle-income countries because of lower risks and higher potential profit margins.[212] Although developed countries tout the International Finance Corporation (IFC) as a private sector investment success story and want to model any private sector arm of the GCF accordingly, less than 29 percent of IFC investments in 2012 went toward the poorest and neediest countries.[213] Second, private sector investment often is funneled through intermediaries, such as investment banks, venture capital firms, and insurance institutions, which challenges GCF oversight and enforcement of fiduciary, environmental, and social safeguards.[214] Finally, private sector investment is much more likely to be directed toward mitigation projects with the potential to yield profits rather than adaptation projects, and it is not as likely to align with national-level climate priorities.[215]

Despite these concerns, the Governing Instrument provides that "[t]he Fund will

---

211) *See* Green Climate Fund, *Structure of the Fund, Including the Structure of the Private Sector Facility (Progress Report)*, GCF/B.06/12, 9 (Feb. 14, 2014).

212) *See* Karen Orenstein, *A Struggle for the Soul of the GCF*, blog, (Nov. 20, 2012), http://www.foe.org/news/archives/2012-11-a-struggle-for-the-soul-of-the-gcf.

213) International Finance Corporation, *IFC Global Results*, http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/Annual+Report/Previous+Annual+Reports/2011+Printed+Report/Global_Results/ (last visited April 20, 2014); *see also* Green Climate Fund, *Business Model Framework: Private Sector Facility*, GCF/B.04/07, ¶¶ 11-13 (June 12, 2013) (discussing barriers to private sector investment).

214) *See A Struggle for the Soul of the GCF*, *supra* note 212.

215) *See* No Author, Green Climate Fund: A Background Briefing, 2, http://climatemarkets.org/wp-content/uploads/2013/10/GCF-5thMeeting-BackgroundBriefing.pdf.

have a private sector facility that enables it to directly and indirectly finance private sector mitigation and adaptation activities."[216] The Governing Instrument also explains that the GCF's private sector facility (PSF) will work toward creating enabling environments in developing countries, operate within a country-driven framework, and partner with small sector actors, and involve small and medium-sized enterprises.[217] These statements are consistent with developing country positions, but what role the GCF Board or the COP will have in ensuring that these terms are met remains undecided. Moreover, although the Board decided that the PSF would operate under the guidance of the GCF Board, the Board set up the PSF to have its own governance structure—a 20-person Private Sector Advisory Group, which will include private sector representatives.[218]

(3) Fund Disbursement Issues

Central to the debates concerning fund disbursement is the idea of "country ownership." In the GCF context, the concept of "country ownership" was explicitly introduced in the Governing Instrument as a means of achieving direct access.[219] Throughout negotiations regarding the GCF, however, "country ownership" has come to apply to a broader array of disbursement issues, including the designation of national designated authorities (NDAs) and the development of a no-objection procedure.[220] The push for country ownership as a driving principle of the GCF derives from developing country dissatisfaction with the GEF, primarily, but also other financial institutions, such as the World Bank.

Drawing from the recent push in the GEF's fund disbursement policy, developing countries advocated strongly for direct access as the primary modality of GCF fund disbursement, as is the case with the Adaptation Fund.[221] In order

---

216) Decision 3/CP.17, *supra* note 8, Annex, ¶ 41

217) Decision 3/CP.17, *supra* note 8, Annex, ¶¶ 42, 43.

218) Green Climate Fund, *Decisions of the Board – Fifth Meeting of the Board, 8 – 10 October 2013*, GCF/B.05/23, 50-51 (Nov. 8, 2013).

219) *See* Decision 3/CP.17, *supra* note 8, Annex, ¶ 47 ("The Board will consider additional modalities that further enhance direct access, including through funding entities with a view to enhancing country ownership of projects and programmes.").

220) *See, e.g.* Green Climate Fund, *Country Ownership*, GCF/B.06/07 (Feb. 11, 2014).

to appease most Parties, access to the Green Climate Fund is conceived broadly, allowing for participation by domestic and international actors. In other words, it includes both direct and indirect access. Developing countries are able to access GCF funds directly through accredited implementing entities, and these entities may be sub-national, national, regional, or international in scale.[222] Under the GCF, the implementing entities will work with executing entities—the entity charged with undertaking the project—to ensure successful execution of the project's design and goals.[223]

Allowing for direct access through sub-national and national level actors is meant to ensure that developing countries receive financial support with less overhead and administrative support given to outside entities. As identified in the analysis of the Adaptation Fund, however, the fiduciary and other standards and safeguards that an agency must meet to receive money can be burdensome and in some cases, even be a barrier for certain countries to benefit from "direct access."[224] However, some consider direct access under the Adaptation Fund a successful access modality that increases the speed of delivery and better targets resources to local priorities.[225] In order to build fairness and equity into the GCF,

---

221) *See supra* notes 142 – 144 and accompanying text.

222) Decision 3/CP.17, *supra* note 8, Annex, ¶¶ 45 – 49.

223) Green Climate Fund, *Initial Modalities for the Operation of the Fund's Mitigation and Adaptation Windows and the Private Sector Facility*, GCF/B.06/02, at 5 (Feb. 11, 2014) ("In particular, the IEs and intermediaries would undertake first-level due diligence on behalf of the Fund of the proposed project or programme; conclude grant or loan agreements with executing entities (EEs); disburse funds to, and, in case of loans, receive debt service from, EEs; and ensure that the EE adheres to the Fund's social and environmental safeguards, fiduciary standards and other requirements. The Fund would provide readiness and preparatory support to sub-national, national and regional IEs and intermediaries as needed, to increase their capabilities of meeting the Fund's accreditation criteria.").

224) *See* Berliner, et al., *supra* note 97, at 3-4 (explaining the challenges faced by developing countries in getting national implementing entities approved under the GEF and the Adaptation Fund).

225) *See* Vivid Economics, African Development Bank, Operationalising the Green Climate Fund: Enabling African Access, 2, *available at*: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Operationalising%20the%20Green%20Climate%20Fund-Enabling%20African%20Access.pdf.

as well as to reduce criticisms of other direct access models, the Governing Instrument contemplates that a portion of the initial funding dedicated to readiness and preparatory support will be dedicated to increasing the capability of sub-national, national, and regional implementing entities of meeting the GCF's accreditation criteria.[226)]

As part of enabling "country ownership," the Governing Instrument also proposes that developing countries may designate a national authority to act as a liaison with the GCF.[227)] This national designated authority (NDA)

> will recommend to the Board funding proposals in the context of national climate strategies and plans, including through consultation processes. The national designated authorities will be consulted on other funding proposals for consideration prior to submission to the Fund, to ensure consistency with national climate strategies and plans.[228)]

The purpose of the NDAs is to facilitate country-ownership, but some developing countries are concerned that the GCF Board is overly directive about what should constitute an NDA. For example, some developing countries prefer the NDA to be an individual or an office of the President, but the GCF Board has expressed a preference that the NDA be a ministry, preferably even a finance ministry, since it and the Secretariat view the NDA as means of having climate finance mainstreamed into economic planning.[229)] Readiness and preparatory support

---

226) *See* Decision 3/CP.17, *supra* note 8, at Annex, ¶ 47; *see also* Green Climate Fund, *Initial Modalities for the Operation of the Fund's Mitigation and Adaptation Windows and the Private Sector Facility*, GCF/B.06/02, ¶ 11(Feb. 11, 2014) (outlining the initial operating modalities of the GCF after initial capitalization).

227) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 46.

228) Decision 3/CP.17, *supra* note 8, at Annex, ¶ 46.

229) *See* Third World Network, *Green Fund discusses country ownership and readiness support*, blog (Mar. 4, 2014), http://www.twnside.org.sg/title2/climate/info.service/2014/cc140302.htm; The Board has considered the following definition of an NDA:
An NDA is a designated institution in the country with the authority and mandate to officially communicate and liaise with the Fund, through the Secretariat, and whose registered signatory has principal signing authority on behalf of the national government on matters pertaining to the Fund.

funds are slated to facilitate the assignment of NDAs in developing countries, but prior to committing an NDA, a developing country may appoint an interim focal point.[230)]

The NDA is also critical to implementing "an effective and transparent no-objection procedure," which the COP asked the Board to design and implement.[231)] This "no-objection procedure" is intended to "ensure consistency with national climate strategies and plans and a country-driven approach and to provide for effective direct and indirect public and private sector financing by the Green Climate Fund."[232)] Other funds employ analogues of a no-objection procedure, including the GEF and the Adaptation Fund.[233)] The primary goal of any no-objection procedure is simple—to ensure that the national government of the country in which a project will take place approves of the project. A broader, but related, goal is to ensure that all projects taking place within a country comport with that country's national climate change strategy.[234)]

The design and implementation of the no-objection procedure was a key element of the February 2014 Board meeting. Most debate centered on the Board's consideration of a tacit no-objection procedure. The draft initial no-objection procedure presented to the Board describes a process in which the Secretariat is able to assume no-objection if it has not received a no-objection letter within a three-week timeframe.[235)] However, developing countries in general opposed any

GCF/B.06/07, *supra* note 220, ¶ 22(a) (Feb. 11, 2014).

230) Green Climate Fund, *Business Model Framework: Access Modalities*, GCF/B.04/05, ¶ (c) (June 11, 2013). The Board has considered the following regarding focal points:

> A focal point is a designated individual or an office in the national government that has the authority and mandate to officially communicate and liaise with the Fund's Secretariat and the Board on behalf of the national government. Depending on national circumstances, a focal point may be nominated as an interim measure in advance of the designation of the NDA.

GCF/B.06/07, supra note 220, at ¶ 22(b).

231) UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund*, Decision 6/CP.18, FCCC/CP/2012/8/Add.1, ¶ 7(a) (Feb. 2013).

232) *Id.*

233) *See* Orenstein, *supra* note 94, at 16.

234) GCF/B.06/07, *supra* note 220, at ¶ 11.

consideration of tacit no-objection, arguing that it undermined the fundamental principles of a no-objection procedure, the role of the NDA as a project filter, and, ultimately, the country-driven approach.[236)]

Ⅳ. The Standing Committee on Finance

When the UNFCCC Parties created the Green Climate Fund during COP16, they also created the Standing Committee, which was later renamed the Standing Committee on Finance (SCF).[237)] The SCF's goal is to help the COP manage the financial mechanisms of the Convention.[238)] The COP directed the SCF to improve "coherence and coordination" of climate financing, "rationalization of the financial mechanisms," mobilization of resources and management, and reporting and verification of support provided to developing countries.[239)] In addition to these broad goals, at COP17, the Parties provided the following six specific tasks for the SCF to undertake to achieve those goals:

1. organize a communication forum for the continued exchange of information regarding climate change finance;
2. create and maintain relationships with the Subsidiary Body for Implementation and other thematic bodies of the Convention;
3. provide draft guidance for the COP regarding the operating entities of the financial mechanism with specific attention place on consistency and practicality;
4. supply recommendations on "coherence, effectiveness, and efficiency" of the operating entities of the financial mechanism;

---

235) GCF/B.06/07, *supra* note 220, Annex II, at ¶¶ 4 – 9.

236) *See generally* Green Fund discusses country ownership and readiness support, *supra* note 229.

237) Decision 1/CP.16, *supra* note 4, at ¶ 112; UNFCCC, *Report of the Standing Committee*, Decision 5/CP.18, FCCC/CP/2012/8/Add.1, ¶ 9 (Dist. Feb. 2013).

238) Decision 1/CP.16, *supra* note 4, ¶ 112.

239) Decision 1/CP.16, *supra* note 4, ¶ 112.

5. provide expert input for the preparation and conduct of the periodic reviews of the financial mechanism; and
6. prepare a biennial assessment of climate finance flows.[240]

At COP18, the COP requested two further actions—namely, that the SCF would provide input into the review of the financial mechanism and that it would support implementation of the Work Programme on Long-term Finance.[241] These goals have become the basis for the SCF's activities over the last two years and progress on these issues is described below, with a look first at the structure of the SCF.

1. Internal Organization

Along with the specific tasks for the SCF to undertake, the COP adopted a Working Modality for the SCF at COP17.[242] The Working Modality mandates that the SCF comprise twenty members, ten from Annex I countries and ten from non-Annex I countries. Among the non-Annex I countries, two must be representatives from each of Africa, Asia-Pacific, Latin America, and the Latin America and Caribbean States. In addition, one representative from a small island developing State and one from a least developed State serves on the SCF.[243] The Parties nominate committee members and the COP as a whole approves the nominations.[244] The members are required to have climate change finance experience and the SCF members must reflect a gender balance. The committee meets at least twice a year and can also elect to meet more frequently.[245] In

240) UNFCCC, *Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, Decision 2/CP.17, FCCC/CP/2011/9/Add.1, ¶121 (Dist. March 2012).

241) *See* UNFCCC, *Review of the Financial Mechanism*, Decision 8/CP.18, FCCC/CP/2012/8/Add.1 (Dist. Feb. 28, 2013) (regarding the review of the financial mechanism) *and* UNFCCC, *Work programme on long-term finance*, Decision 4/CP.18, FCCC/CP/2012/8/Add.1 (Dist. Feb. 28, 2013) (regarding the Work Programme on Long-term Finance).

242) Decision 2/CP.17, *supra* note 240, at ¶125, Annex IV, ¶1.

243) *Id.* at Annex IV, ¶1.

244) *Id.* at Annex VI, ¶3.

2012, the committee met twice, and in 2013, the committee met a total of three times.[246] The Working Modality provides that the Committee shall make decisions by consensus.[247]

The members of the committee serve a term of two years and are able to seek additional terms.[248] Originally, the committee would elect a chair and a vice-chair each year;[249] however, as of COP18 the committee elects two co-chairs, one from a developed nation and one from a developing nation.[250] The Working Modality also allows for observers.[251] The SCF decided that all Parties and observers accredited with the Secretariat are able to attend and participate in SCF meeting s.[252] In fact, during both 2012 meetings, the SCF allowed observers to express views to the committee at large and participate in the deliberations of the working groups.[253]

The Working Modality resolves certain other administrative issues as well, including for the provision of Secretariat services and for its relationship to the COP. The COP determined that the UNFCCC Secretariat should provide administrative support to the SCF.[254] Additionally, the Working Modality requires the SCF to submit annual reports and recommendations to the COP. In 2015, the COP will review the functionality of the SCF and reassess its necessity.

2. The SCF's Accomplishments and Current Work

245) *Id.* at Annex VI, ¶7.

246) UNFCCC, Standing Committee on Finance, *Report of the Standing Committee on Finance to the Conference of the Parties*, FCCC/CP/2013/8, ¶ 11 (Nov. 2013) [hereinafter *2013 Report of the Standing Committee on Finance*].

247) Decision 2/CP.17, *supra* note 240, Annex VI, ¶ 8.

248) 2013 *Report of the Standing Committee on Finance*, *supra* note 246, at ¶ 12.

249) *Id.* at Annex IV, ¶ 4; Decision 5/CP.18, *supra* note 237, at ¶ 7.

250) Decision 5/CP.18, *supra* note 237, at ¶ 7.

251) Decision 2/CP.17, *supra* note 240, Annex VI, at ¶5.

252) Decision 2/CP.17, *supra* note 240, Annex IV; UNFCCC, Standing Committee on Finance, *Report of the Standing Committee to the Conference of the Parties*, FCCC/CP/2012/4, ¶ 22 (Oct. 24, 2012) [hereinafter *2012 Report of the Standing Committee*].

253) *2012 Report of the Standing Committee on Finance*, *supra*, at ¶ 18.

254) Decision 2/CP.17, *supra* note 240, Annex IV.

Since its creation in 2011, the SCF has submitted two reports to the COP and received feedback on both. These reports update the COP on how the SCF is meeting the goals set at COP17. As expected, some goals are progressing more quickly than others.

(1) Climate Change Finance Forum

The first major undertaking for the SCF was establishing the climate change finance forum. As part of the SCF's first report to the COP, the SCF included the "Preliminary elements of the forum of the Standing Committee," which set out the objectives, structure, and design of the forum.[255] The SCF indicated that they had developed two models—one would follow an in-person model and would be held once per year and the second would be a virtual model and would function on an ongoing basis.[256] At COP18, the Parties encouraged the GCF to seek forum participation from the private sector, financial institutions, and academia.[257]

At COP19, the SCF reported on the success of its first forum, which focused on "mobilizing finance and investments for climate action now."[258] The COP responded by "invit[ing]" the SCF to host its next forum on the issue of "mobilizing finance for adaptation from both public and private sectors."[259] These fora have the potential to be important neutral ground for having conversations outside of formal negotiations, especially regarding potentially contentious and long-standing issues, such as the need for scaled-up adaptation financing.

255) *2012 Report of the Standing Committee on Finance*, *supra* note 252, at Annex III (preliminary elements of the form of the Standing Committee).

256) *2012 Report of the Standing Committee on Finance*, *supra* note 252, at Annex III, ¶ 7.

257) Decision 5/CP.18, *supra* note 237,at ¶ 4.

258) The first forum took place in Barcelona, Spain in 2013. The specific topics addressed during the forum were mitigation, adaptation, and the tracking of climate finance. When the SCF held the first forum, it also launched the virtual form that will function year-round. *2013 Report of the Standing Committee on Finance*, *supra* note 246, atpt. III(A).

259) UNFCCC, *Report of the Standing Committee on Finance to the Conference of the Parties*, Decision 7/CP.19, FCCC/CP/2013/10/Add.1, ¶ 5 (Dist. Jan. 21, 2014). The second forum is scheduled to take place back-to-back with the Climate Investment Funds Partnership Forum in late June 2014 in Jamaica. *2013 Report of the Standing Committee on Finance*, *supra* note 246, pt. III(A) ¶ 22.

(2) Relationships with other UNFCCC Institutions

In its role as a synthesis organ for climate finance, relationships with other UNFCCC entities are critical. The SCF has made some progress in creating relationships with the other bodies and work areas of the Convention. At present, this progress constitutes meetings as opposed to clear substantive engagement. For example, the SCF met with the GCF Board, the Technology Executive Committee, the Adaptation Committee, the SBI Chair, and the Co-Chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action.[260] The SCF has agreed to strengthen these relations throughout the course of 2014.[261]

Consistent with its mandate to support the Work Programme on Long-term Finance, the SCF has begun to engage at a level that suggests it could play an enduring role in shaping the outcomes of the work programme. The SCF indicated the potential synergies between the work programme and the SCF forum, devised a list of themes for the work programme to consider, and recommended that the work programme consider inputs from SCF members when developing activities.[262] At COP19, the Parties specifically asked the SCF to supply experts to the Work Programme on Long-term Finance, further reinforcing the connection between these groups.[263]

(3) Draft Guidance for the Operating Entities of the Financial Mechanism and Review of the Financial Mechanism

The SCF has begun to play an increasingly significant role with respect to the financial mechanism of the Convention. At COP17, the Parties charged the SCF with drafting guidance to the operating entities of the financial mechanism, which, as discussed above, had been a contentious endeavor in the past. At COP18, the Parties requested that the SCF suggest amendments to the guidelines for the review of the financial mechanism. It appears that one of the critical goals of this

260) *2013 Report of the Standing Committee on Finance*, *supra* note 246, at ¶ 37.
261) *Id.* at ¶ 38.
262) *Id.* at ¶33.
263) UNFCCC, Decision 3/CP.19, *supra* note 141, at ¶ 3.

latter request is to ensure harmonization amongst existing guidelines and the various financial programs of the UNFCCC:

> The COP mandated the SCF, in developing the draft updated guidelines, to take into account existing guidelines and recent developments within the financial mechanism, drawing upon information from, inter alia, fast-start finance, the work of the GCF, taking into account its early stage of operationalization, the initial review of the Adaptation Fund and the work programme on long-term finance.[264]

In 2013, the SCF was able to start providing draft guidance to the operating entities of the financial mechanism. The SCF examined the GEF and the GCF to create new guidance for these entities.[265] The SCF invited input from its own members and also invited the Parties and the GEF Evaluation Office and the GEF Secretariat to the 5th meeting of the SCF. At this meeting, the SCF and the GEF were able to exchange information about the financial mechanism progress. Prior guidance from the UNFCCC to the GEF was often criticized as repetitive, vague, and ambiguous.[266] However, developing countries feel that the repetitiveness was due to the GEF's failure to respond.[267] It remains to be seen whether or not the guidance provided for COP19 will provide more helpful guidance, but the SCF is making an effort to ensure as much. The SCF invited representatives from the GEF and the GCF to the 6th Meeting of the SCF. The representatives and the SCF held a dialogue about what steps the SCF could take to make the guidance more helpful to the financial mechanism.[268]

---

264) *2013 Report of the Standing Committee on Finance*, *supra* note 246, at ¶ 25; Decision 8/CP.18, *supra* note 241, at ¶ 2.

265) *2013* Report *of the Standing Committee on Finance*, *supra* note 246, at ¶31.

266) Climate & Development Knowledge Network, REPORT: Towards the Fifth Review of the UNFCCC's Financial Mechanism, 3 http://cdkn.org/wp-content/uploads/2013/03/CDKN_UNFCCCs_ Financial_Mechanism_Final-22-March-2013.pdf (March 2013).

267) Third World Network Info Service on Climate Change, UNFCCC: outcome of 6th meeting of Standing Committee on Finance, http://www.twnside.org.sg/title2/climate/info.service/2014/cc140306.htm (Mar. 26, 2014).

268) Climate Finance Advisory Service, Daily Briefing 6th SCF Meeting, 2 https://germanwat

(4) "Coherence, Effectiveness, and Efficiency" of the Financial Mechanism

The SCF provides recommendations on coherence, effectiveness, and efficiency as the COP asks for it.[269] The SCF does not appear to have fleshed out this mandate fully and assigned to it a particular scope of work, but the theme of "coherence" permeates the SCF's work. For example, the SCF, in its report to the COP, noted that the functionality of the SCF's fora included promoting linkages and coherence.[270] Additionally, it noted that "coherence and complementarity between the different operating entities" was an objective of the review of the financial mechanism.[271] In general, it appears that the SCF treats this mandate as an ongoing, *ad hoc* objective and will provide recommendations to the COP as appropriate.[272]

(5) Periodic Review and Biennial Assessment

The Parties have charged the SCF with playing a meaningful role in measuring, reporting, and verifying (MRV) the provision of financial support to developing countries.[273] To further clarify the SCF's role related to MRV, the SCF performs to key functions—it participates in the periodic review of the financial mechanism and it will prepare a biennial assessment and overview of climate finance flow s.[274]

In 1998, the COP decided that it would review the financial mechanism every four years pursuant to Article 11.4 of the Convention.[275] At the same time, it

ch.org/en/download/8912.pdf (Mar. 5, 2014).

269) *2012 Report of the Standing Committee on Finance*, *supra* note 252, at ¶ 5(b); *2013 Report of the Standing Committee on Finance*, *supra* note 246, at ¶ 4(d) (Nov. 4, 2013).

270) *2013 Report of the Standing Committee on Finance*, *supra* note 246, at 6.

271) *Id.* at Annex IV, ¶ 1(vi).

272) *See id.* at Annex VIII, ¶ 1(d) (Workplan of the Standing Committee on Finance for 2014 – 2015).

273) Decision 1/CP.16, *supra* note 4, at ¶112.

274) Decision 2/CP.17, *supra* note 240, at ¶ 121(f).

275) UNFCCC, *Review of the financial mechanism*, Decision 3/CP.4, FCCC/CP/1998/16/Add. 1, ¶ 2 (Jan. 25, 1999).

adopted a set of guidelines for the conduct of the review.[276] In performance of its obligation to support the fifth periodic review of the financial mechanism, the SCF undertook a review of the relevant guidelines and has negotiated a set of recommendations for the COP.[277] At COP19, the Parties requested that the SCF provide expert input to the review and adopted a set of criteria, including the following:

- the transparency of decisionmaking processes of the operating entities of the financial mechanism;
- the level of stakeholder involvement;
- the extent to which the financial mechanism is contributing to gender-sensitive approaches;
- the adequacy, predictability, accessibility and timely disbursement of funds for activities in developing country Parties;
- the responsiveness and efficiency of the GEF project cycle and expedited procedures, including its operational strategy, as they relate to climate change;
- the amount of resources provided to developing country Parties, including financing for technical assistance and investment projects, and the mechanisms for country allocation, as well as the results and impacts achieved by the resources provided;
- the amount of finance leveraged and modalities of co-financing when applicable;
- the extent to which the resources provided are contributing to achieving the objectives of the Convention;
- the sustainability of funded programmes, projects and operations in developing country Parties; and
- the extent to which the financial mechanism is contributing to country ownership of programmes and projects.[278]

[276] *Id.* at Annex.

[277] *See 2013 Report of the Standing Committee on Finance, supra* note 246, at ¶¶ 25 - 28 (describing the history of the negotiations).

[278] UNFCCC, *Review of the Financial Mechanism*, Decision 8/CP.19, FCCC/CP/2013/10/Add.1, Annex, ¶ 3 (Dist. Jan. 31, 2014).

Even though this review will include the service of the GCF as an operating entity of the financial mechanism for the first time, the criteria do not touch on the importance of evaluating the relationship between the GEF and the GCF. One of the objectives of the review is "to examine how to improve consistency and complementarity of the financial mechanism with other sources of investment and financial flows."[279] In large part, the lack of concrete evaluative criteria may be due to the nascent stages of GCF operation during this review, but over time, this should become a critical feature of these periodic reviews.

The SCF will conduct its first biennial review of climate finance flows in 2014, and at COP19 in 2013, the COP approved a work programme outlining the SCF's tasks in this regard.[280] The goals of the assessment are to provide an overview and assessment of climate finance flows, identify gaps and limitations in the climate finance, and to strengthen reporting and information on climate finance.[281] According to the SCF's work programme, the assessment which will focus on climate finance since 2007 and will assess the goals of climate finance including, geographic distribution, the 2°C goal, and country needs and priorities.[282] The assessment is projected to be complete by COP20 in 2014.

Ⅴ. An Overarching Approach to UNFCCC Finance

This examination of the institutions relevant to UNFCCC finance reveals a fragmented and controversial architecture. As a result, coherence and complementarity may be difficult to achieve, especially if building the GCF into a single, overarching funding body is a goal. Nonetheless, with careful attention to

279) *Id.* at Annex, ¶ 1. At COP18, the SCF was advised to "use to recent developments among the financial bodies of the convention to inform their suggested changes to the guidelines." Decision 8/CP.18, *supra* note 241, at ¶2.

280) Decision 7/CP.19, *supra* note 259, at ¶ 6.

281) *2013 Report of the Standing Committee on Finance*, *supra* note 246, at Annex VII, (A).

282) *2013 Report of the Standing Committee on Finance*, *supra* note 246, at Annex VII, (B).

political sensitivities and climate finance trends, possibilities exist for building a coherent regime that offers complementarity and eliminates the fragmentation and controversy that currently prevails. Achieving this is no doubt a many-layered, multi-dimensional, and long-term endeavor requiring significant negotiation. Understanding the history and governance of the existing institutions, as well as the current mandate and structure of the GCF, is a crucial first step. By providing this information in the context of realizing the goals of both developed and developing countries, this Paper contributes to this first step. The following conclusions provide insight into some of the most important logistical factors for consideration as GCF policy moves forward.

1. The Future of the Adaptation Fund, the Least Developing Countries Fund, and the Special Climate Change Fund

Of the different financial institutions embedded within the UNFCCC framework, the most likely to be subsumed are the more specialized funds, including the LDCF, the SCCF, and the Adaptation Fund. Certain aspects of the LDCF and SCCF make them the easiest for the GCF to assume responsibility for and subsume entirely. Most critical is the fact that neither enjoys its own governance structure; the GEF Council serves as the main governing body for both the LDCF and the SCCF, with the COP providing guidance. Of these, the LDCF is even more likely to be absorbed by GCF infrastructure; the LDCF focuses on adaptation planning and project implementation and the GCF is meant to become the main finance institution for adaptation funding. The SCCF, on the other hand, focuses not only on adaptation but also on technology transfer. Unless the GCF develops a clear line of funding for technology transfer, certain countries may not readily give up the SCCF.

Additionally, because certain logistical aspects of the LDCF and SCCF are important to recipient countries, they may be reluctant to part with specific features of these Funds unless those aspects can be incorporated into the relevant GCF window or overall apparatus. First, neither the LDCF nor the SCCF apply the incremental cost principal to the disbursement of funds. The governing instrument of the GCF contemplates funding both full costs and incremental costs but it does not specify under what circumstances. As a result, this could become a significant source of tension. To avoid jeopardizing the LDCF and the SCCF, some Parties may wish to leave these two funds as separate entities. Additionally, neither the LDCF nor the SCCF require that global benefits derive from a particular project. While the GCF criteria for the results of projects might differ from the GEF's approach to global benefits, donor countries especially view the GCF as driving impactful change, so this too could be a source of significant tension if rolling the LDCF and the SCCF into the GCF becomes a subject of debate.

The relationship between the Adaptation Fund and the GCF may be more a matter of circumstance than of political desire. Because the Adaptation Fund is a Kyoto Protocol institution and linked directly to the Kyoto Protocol's Clean Development Mechanism, its future may depend on whether the Parties intend to roll the Clean Development Mechanism into the post-2020 climate change regime. If the Clean Development Mechanism continues to exist in much the same way it does now under a new climate change framework, it is easy to imagine that developing countries would want to retain the Adaptation Fund, primarily because are a decision-making majority in Adaptation Fund governance. However, again, with the GCF purported to become the most significant channel for adaptation funding, many countries might push for the GCF to subsume the Adaptation Fund. This could occur even with the continuation of the Clean Development Mechanism since the GCF contemplates obtaining its funding from a wide variety of sources.

2. Defining the Relationship Between the GCF and the GEF

The future relationship between the GEF and the GCF is perhaps the most difficult to imagine. The landscape of climate finance is barely coordinated and, to many, the GCF is a reinvention of the GEF—at least with respect to climate finance—which raises challenging questions of competition, necessity, and niche must be answered.

Although the Parties would have significant political issues to resolve, the GEF could be eliminated as an operating entity of the financial mechanism, leaving the GCF as the sole operating entity. Since the UNFCCC text only designates the GEF as an interim operating entity, the COP could discontinue its role in the financial mechanism by a COP decision. Of course, this would require significant dismantling of the UNFCCC-GEF architecture, but it is possible. However, even if the GEF no longer served as an operating entity of the UNFCCC's financial mechanism, the COP does not have the authority to prevent the GEF from continuing its work on climate finance; in fact, since one of the GEF Trust Fund's focal areas is climate change, it could continue to fund climate change projects in eligible countries through appropriate implementing and executing agencies. Because the GEF does not exist wholly under the authority of the COP, it may always remain a competitive funding mechanism, one that, depending on the GCF's operational framework, may be more appealing to donor countries.

Thus, given the nature of the GEF, it is more likely that the GCF and GEF will both provide climate finance, with the goal that the funds work together to avoid unnecessary overlap, competition for resources, or political strife. Such a relationship could be achieved with a balanced top-down and bottom-up approach. The Standing Committee on Finance could provide high-level, top-down coordination and facilitation, and the National Designated Authorities could provide in-country, bottom-up project and needs coordination. The following describes the role that each could play to drive coherence and complementarity within the UNFCCC's climate finance framework.

(1) Top-down: The Standing Committee on Finance

The SCF will likely play a significant role in the future of UNFCCC finance. In fact, its objectives include "coherence and coordination" of climate financing and "rationalization of the financial mechanisms." Because the SCF is an overarching finance-institution that is involved in management as opposed to finance itself, it offers a top-down, or multilateral, approach to harmonizing climate finance of the UNFCCC.

Facilitating coherence and coordination among the various financial institutions could largely occur through the guidance offered via the COP to the operating entities of the financial mechanism. In fact, one of the major roles of the SCF, to date and likely into the future, is to facilitate the COP's provision of guidance to the operating entities of the financial mechanism. Because this now includes guidance to both the GEF and the GCF, the SCF is in a position to offer suggestions via the COP's guidance to harmonize their respective roles. At the most basic level, if both the GEF and GCF continue as operating entities, harmonization will be required regarding replenishment periods, including planning and commitment levels, and regarding project priorities and disbursements. In the past, the GEF has typically unilaterally decided the scale of funding necessary for climate change related projects, mostly because the COP has failed to agree to specific input. The SCF is in a position to strengthen COP input and thus provide developing countries more of a sense of control over the GEF's climate finance role, as well as build a strong foundational relationship between the COP and the GCF.

Rationalization of the financial mechanism implies something more than facilitating coherence and coordination; instead, it suggests reorganization for the purposes of efficiency and consistency. Because this is a mandate of the SCF, it can be inferred that the Parties at least thought about a major reordering of the climate finance network, including perhaps distancing the UNFCCC from the GEF. Regardless of any intention, however, neither the Parties nor the SCF have taken any significant steps toward rationalization. Should any particular Party desire to consider what rationalization might look like or what the implications might be, this mandate provides an opening to ask the SCF to consider the matter.

(2) Bottom-up: The Role of the National Designated Authority

In contrast to the role of the SCF, NDAs could provide a route for effectively harmonizing climate change finance as a bottom-up, internationally guided but unilateral effort. At the center of a national government's climate finance initiatives, the NDA could play a pivotal role in setting national priorities, shaping national climate finance policy, and establishing best-fit scenarios for funds and projects. This might not influence coherence amongst UNFCCC financial institution policies, nor would it achieve rationalization amongst the financial institutions, but it would ensure at least national level coherence and rationalization. With various funds likely funding similar projects, developing countries will be best served by reducing any potential duplication of efforts and competition for funding at the national level.

Most likely, this sort of bottom-up approach could not happen without some linking and harmonizing of the fund policies. For example, it would be useful for similar criteria to apply to designation and approval of GEF Focal Points, Adaptation Fund Designated Authorities, and NDAs under the GCF. However, because of various positions on approval processes for these different entities, it might be difficult to achieve coherence in this regard. Additionally, these national entities would have to be able to perform substantive functions beyond acting as liaison to the various finance institutions and playing a role in any no-objection procedure. In fact, if one function of the NDA is to build climate finance coherence, then the NDA should likely be an office, agency, ministry, or some combination of national-level actors who play an influential role in climate change decision-making as opposed to a single person.

Ⅵ. Conclusion

While pathways to coherence and complementarity exist within the UNFCCC financial framework, all depend on galvanizing developed and developing country agreement. As this paper shows, forging mutual agreement between donor and recipient countries is challenging at best. Until a mutually agreeable compromise is struck, developed countries will put their money where they feel comfortable and developing countries will continue to push for new or reinvented institutions that they feel suit their needs. As such, this paper does not suggest one comprehensive solution based on such a mutual agreement. However, it does suggest that steps can be taken to achieve coherence and complementarity, through both multilateral and unilateral efforts, and probably, most effectively, a combination of top-down and bottom-up approaches.

투고일자 2014.09.03, 심사일자 2014.09.24, 게재확정일자 2014.09.25

REFERENCE LIST

Accreditation of GEF Project Agencies, http://www.thegef.org/gef/agencies_accreditation.

Adaptation Fund, Parties' Designated Authorities, https://www.adaptation-fund.org/page/parties-designated-authorities

Alexander Sarac, *Green Climate Fund: Future of Renewables and Infrastructure Financing – from Political Decision to Implementation*, 2 (2012), http://www.dlapiper.com/~/media/Files/Insights/Publications/2012/12/Green%20Climate%20Fund%20GCF/Files/Climate_Change_Alert_Renewables_Dec_2012/FileAttachment/Climate_Change_Alert_Renewables_Dec_2012.pdf.

Annaka Peterson Carvalho, Will the Green Climate Fund finally stop short-changing climate adaptation?, blog (Mar. 5, 2014).

Benito Müller, FEATURE: How will the Green Climate Fund allocate its money? All you wanted to know but were afraid to ask (Blog), http://cdkn.org/2014/01/how-will-the-green-climate-fund-allocate/

Berliner, et al., *Enhancing Direct Access to the Green Climate Fund*, 2 (June 2013), *http://cdkn.org/2013/06/report-enhancing-direct-access-to-the-green-climate-fund/*

Bonizella Biagini & Saliah Dobardic, *Accessing Resources Under the Least Developed Countries Fund*, 7 (May 2011), http://www.thegef.org/gef/sites/thegef.org/files/publication/23469_LDCF.pdf [hereinafter *Accessing Resources Under the LDCF*]

Bonizella Biagini & Saliah Dobardic, *Accessing Resources Under the Special Climate Change Fund,* 8 (May 2011), http://www.thegef.org/gef/sites/thegef.org/files/publication/23470_SCCF.pdf [hereinafter *Accessing Resources Under the SCCF*].

Clifford Polycarp & Malaya Zumel, The Green Climate Fund: From Inception to Launch, blog http://www.wri.org/blog/green-climate-fund-inception-launch-0.

Climate & Development Knowledge Network, *Enhancing Direct Access to the Green Climate Fund*, 1 (June 2013), *http://cdkn.org/2013/06/report-enhancing-direct-access-to-the-green-climate-fund*

Climate & Development Knowledge Network, REPORT: Towards the Fifth Review of the UNFCCC's Financial Mechanism, 3 http://cdkn.org/wp-content/uploads/2013/03/CDKN_UNFCCCs_Financial_Mechanism_Final-22-March-2013.pdf (March 2013).

Climate Finance Advisory Service, Daily Briefing 6th SCF Meeting, 2 https://germanwatch.org/en/download/8912.pdf (Mar. 5, 2014).

Daniel A. Bodansky, *The United Nations Framework Convention on Climate Change: A Commentary*, 18 Yale J. Int'l L. 451, 455 (1993) (noting the difficulty of determining what constitutes an incremental cost).

E3G, *What Was Decided at the Seventh Green Climate Fund Meeting and Where Does this Take Us?*, at http://www.e3g.org/news/media-room/What-was-decided-at-the-Seventh-Green-Climate-Fund-meeting-and-where-does-t.

Farhana Yamin & Joanna Depledge, The International Climate Change Regime: A Guide to Rules, Institutions and procedures 256-266 (2004)

GCF, *Decisions of the Board – Sixth Meeting of the Board 19 – 21 February 2014*, GCF/B.06/18, 5 (Apr. 17, 2014).

GCF, Special Climate Change Fund, http://www.thegef.org/gef/SCCF

GEF, Accreditation of GEF Project Agencies, http://www.thegef.org/gef/agencies_accreditation

GEF, *Behind the Numbers: A Closer Look at GEF Achievements* (Apr. 2014), *available at http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Behind_the_Numbers_April25a-2014-CRA-lo_1.pdf*.

GEF Council, *GEF Operational Strategy*, GEF/C.6/3, ¶ 1.16 (1995).

GEF Counsel Meeting, *GEF Minimum Fiduciary Standards: Separation of Implementation and Execution Functions in GEF Partner Agencies*, GEF/C.41/06/Rev.01, ¶ 1, note 1 (2011).

GEF, GEF-Administered Trust Funds, http://www.thegef.org/gef/trust_funds (last visited March 31, 2014).

GEF, GEF-5 Initial Star Allocations (Jul. 1, 2010), http://www.thegef.org/gef/sites/thegef.org/files/documents/c38-inf8-rev1-final.pdf.

GEF, Progress Report for the Least Developed Countries Fund and the Special Climate Change Fund, GEF/LDCF.SCCF.15/03, ¶¶ 11, 24 (Oct. 6, 2013).

GEF, Resource Allocation Framework (RAF), http://www.thegef.org/gef/RAF.

GEF Secretariat & World Bank as Trustee, Summary of Negotiations: Fifth Replenishment of the GEF Trust Fund, GEF/A.4/7, 148, at http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF-A.4-7%20Summary%20of%20Negotiations%20of%20the%20Fifth%20Replenishment%20of%20the% 20GEF_0.pdf (2010).

GEF, System for Allocation of Resources (STAR), http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_STAR_A4_april11_CRA.pdf.

GEF Trust Fund, GEF/A.4/7, 148, at http://www.thegef.org/gef/sites/thegef.org/files/documents/GEF-A.4-7%20Summary%20of%20Negotiations%20of%20the%20Fifth%20Replenishment%20of%20the%20GEF_0.pdf (2010).

Global Environment Facility, Areas of Work, GEF Establishes the Nagoya Protocol Implementation Fund, http://www.thegef.org/gef/Press_release/GEF_establishes_NPIF

Global Environment Facility, *Glossary of terms and descriptions Relating to the Accreditation of GEF Project Agencies* (June 2011), *available at* http://www.thegef.org/gef/node/4619

Global Environment Facility, Scientific and Technical Advisory Panel (STAP).http://www.thegef.org/gef/STAP.

Global Environment Facility, What is the GEF, http://www.thegef.org/gef/whatisgef

Global Environment Facility, What is the GEF, GEF History, http://www.thegef.org/gef/whatisgef

Gomez-Echeverri & Müller, *supra* note 20, at 3 (describing intense political negotiations preceding the restructuring of the GEF but eventually the conversion of the GEF from an interim operating entity to an operating entity of the financial mechanism of the UNFCCC).

Green Climate Fund, Background, http://www.gcfund.org/secretariat/background.html.

Green Climate Fund, *Business Model Framework: Private Sector Facility*, GCF/B.04/07, ¶¶ 11-13 (June 12, 2013)

Green Climate Fund, *Business Model Framework: Access Modalities*, GCF/B.04/05, ¶ (c) (June 11, 2013).

Green Climate Fund, *Country Ownership*, GCF/B.06/07 (Feb. 11, 2014).

Green Climate Fund, *Decisions of the Board – Fifth Meeting of the Board, 8 – 10 October 2013*, GCF/B.05/23, 50-51 (Nov. 8, 2013).

Green Climate Fund, *Initial Modalities for the Operation of the Fund's Mitigation and Adaptation Windows and the Private Sector Facility*, GCF/B.06/02, at 5 (Feb. 11, 2014)

Green Climate Fund, Meeting of the Board, *Revised Draft Additional Procedure of the Board*, GCF/B.01-13/02/Rev.01, Annex IX(I)-(II) (2013).

Green Climate Fund, Meeting of the Board, *Decisions of the Board—Fifth Meeting of the Board*, Decision B.05/17 (2013).

Green Climate Fund, Meeting of the Board, *Decisions of the Board*—*Fifth Meeting of the Board*, GCF/B.05/23

Green Climate Fund, *Structure of the Fund, Including the Structure of the Private Sector Facility (Progress Report)*, GCF/B.06/12, 9 (Feb. 14, 2014).

International Finance Corporation, *IFC Global Results,* http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/Annual+Report/Previous+Annual+Reports/2011+Printed+Report/Global_Results/

Jake Werksmen, *Consolidating Global Environmental Governance* 3-4 (2003), *at http://www.environmentalgovernance.org/cms/wp-content/uploads/docs/dialogue/oct03/papers/Werksman%20GEF.pdf*

Karen Orenstein, *A Struggle for the Soul of the GCF*, blog, (Nov. 20, 2012), http://www.foe.org/news/archives/2012-11-a-struggle-for-the-soul-of-the-gcf

Karen Orenstein, et al., *The Green Climate Fund's "No-Objection" Procedure and Private Finance: Lessons Learned from Existing Institutions*, 17 (no date), http://www.ips-dc.org/reports/the_green_climate_funds_no-objection_procedure_and_private_finance_lessons_learned_from_existing_institutions

Laura Druce, et al., *Policy Brief: Key Messages on Direct Access to International Climate Funds from Participants of the NCFISP*, 3 (Jul. 2013), *http://fs-unep-centre.org/sites/default/files/project/1/policy_brief_direct_access_0.pdf*.

Liane Schalatek & Smita Nakhooda, Heinrich Boll Stiftung, *Green Climate Fund*, Climate Finance Fundamentals 11, 1 (2012) http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7918.pdf

Lily Uy Hale, GEF, *How to Access GEF Trust Fund*, http://www.thegef.org/gef/site s/thegef.org/files/eventfiles/9-AccessGEFTrustFund.pdf.

Luis Gomez-Echeverri & Benito Müller, *The Financial Mechanism of the UNFCCC: A Brief History*, 2 (April 2009), *available at http://www.oxfordclimatepolicy.org/publications/documents/ecbiBrief-FMHistory.pdf*.

Instrument for the Establishment of the Restructured Global Environment Facility, Global Environment Facility, Executive Directors' Resolution No. 94-2, Preamble(a) (October 2011)

International Law and Developing Countries: Essays in Honour of Kamal Hossain 134-35 (Sharif Bhuiyan, et al. eds., 2014)

No Author, Green Climate Fund: A Background Briefing, 2, http://climatemarkets.org/wp-content/uploads/2013/10/GCF-5thMeeting-BackgroundBriefing.pdf

Oscar Reyes, *Critical Issues for Channeling Climate Finance via Private Sector Actors*, http://www.academia.edu/3271143/Critical_issues_for_Channelling_Climate_Finance_via_Private_Sector_Actors.

Decision 1/CP.16, *supra* note 4, at Annex III, ¶ 1(c).

System for Allocation of Resources (STAR), http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_STAR_A4_april11_CRA.pdf.

UNFCCC, Adaptation Fund Board, *Report of the 19th Meeting of the Adaptation Fund Board*, AFB/B.19/6/Rev. 1, 2 (2013), https://www.adaptation-fund.org/sites/default/files/AFB%2019%20Rev.1%20report.pdf.

UNFCCC, *An overview of the mandates, as well as the progress of work under institutions, mechanisms and arrangements under the Convention*, FCCC/ADP/2013/INF.2, ¶¶ 99, 102 (Dist. 2013) [hereinafter *An overview of the mandates*].

UNFCCC, *Annex to the Memorandum of Understanding on the determination of funding necessary and available for the implementation of the Convention*, Decision 12/CP.3, FCCC/CP/1997/7/Add.1 (Mar. 25, 1998).

UNFCCC, *Arrangements between the Conference of the Parties and the Green Climate Fund*, Decision 5/CP.19, FCCC/CP/2013/10/Add.1, Annex, ¶ 2–4 (Dist. 2014).

UNFCCC, *Assessment of funding to assist developing countries in fulfilling their commitments under the Convention*, Decision 9/CP.10, FCCC/CP/2004/10/

Add.1, ¶ 1 (Apr. 19, 2005)

UNFCCC, Chronological evolution of the LDC work programme and introduction to the concept of NAPA, https://unfccc.int/adaptation/knowledge_resources/ldc_portal/items/4722.php.

UNFCCC, *Funding Under the Convention*, Decision 7/CP.7, FCCC/CP/2001/13/Add.1, ¶ 1(a) (Dist. 2001).

UNFCCC, *Funding under the Kyoto Protocol*, Decision 10/CP.7, FCCC/CP/2001/13/Add.1, ¶ 11(a) (Dist. Jan. 21, 2002)

UNFCCC, *Implementation of Article 4, paragraphs 8 and 9, of the Convention (decision 3/CP.3 and Article 2, paragraph 3, and Article 3, paragraph 14, of the Kyoto Protocol)*, Decision 5/CP.7, FCCC/CP/2001/13/Add.1, ¶ 11(a) (Dist. Jan. 21, 2002)

UNFCCC, Meeting of the Parties to the Kyoto Protocol, *Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9 (the Doha Amendment)*, Decision 1/CMP.8, FCCC/KP/CMP/2012/13/Add.1, ¶ 21 (Dist. 2013).

UNFCCC, *Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, Decision 2/CP.17, FCCC/CP/2011/9/Add.1, ¶121 (Dist. March 2012).

UNFCCC, *Review of the financial mechanism*, Decision 3/CP.4, FCCC/CP/1998/16/Add.1, ¶ 2 (Jan. 25, 1999).

UNFCCC, *Review of the Financial Mechanism*, Decision 8/CP.19, FCCC/CP/2013/10/Add.1, Annex, ¶ 3 (Dist. Jan. 31, 2014).

UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties*, FCCC/CP/2012/5, ¶ 2.2 (2012).

UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties*, FCCC/CP/2013/6, ¶ 12(b) (2013) [hereinafter *2013 GEF Report to the COP*]

UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund*, Decision 6/CP.18, FCCC/CP/2012/8/Add.1, ¶ 7(a) (Feb. 2013).

UNFCCC, *Report of the Standing Committee*, Decision 5/CP.18, FCCC/CP/2012/8/Add.1, ¶ 9 (Dist. Feb. 2013)

UNFCCC, *Review of the Financial Mechanism*, Decision 3/CP.4, FCCC/CP/1998/16

/Add.1, ¶ 1 (Dist. 1999)

UNFCCC, Standing Committee on Finance, *Report of the Standing Committee to the Conference of the Parties*, FCCC/CP/2012/4, ¶ 22 (Oct. 24, 2012) [hereinafter *2012 Report of the Standing Committee*].

UNFCCC, Standing Committee on Finance, *Report of the Standing Committee on Finance to the Conference of the Parties*, FCCC/CP/2013/8, ¶ 11 (Nov. 20 13) [hereinafter *2013 Report of the Standing Committee on Finance*].

UNFCCC, *Report of the Standing Committee on Finance to the Conference of the Parties*, Decision 7/CP.19, FCCC/CP/2013/10/Add.1, ¶ 5 (Dist. Jan. 21, 201 4).

UNFCCC, Subsidiary Body for Implementation, *Information on the Status of the Resources of the Adaptation Fund*, FCCC/SBI/2013/INF.2, Annex (Apr. 23 2013).

UNFCCC, *The Cancun Agreements: Outcomes of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention,* Decision 1/ CP.16, ¶ 102 (Dist. Mar. 15, 2011)

UNFCCC, *Launching the Green Climate Fund*, Decision 3/CP.17, FCCC/CP/2011/9/ Add.1, Annex, ¶¶ 33-34 (Dist. Mar. 15, 2012)

UNFCCC, *Memorandum of Understanding between the Conference of the Parties and the Council of the Global Environment Facility*, Decision 12/CP.2, An nex, FCCC/CP/1996/15/Add.1 (Oct. 29, 1996) [hereinafter UNFCCC-GEF MOU].

UNFCCC, *Work programme on long-term finance*, Decision 4/CP.18, FCCC/CP/201 2/8/Add.1 (Dist. Feb. 28, 2013)

United Nations Development Program, *Discussion Paper: Direct Access to Climate Finance: Experiences and Lessons Learned*, 9 (Nov. 2011) *http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7479.pdf*

United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, S. Treaty Doc. No. 102-38 (1992), 1771 U.N.T.S. 107 [here inafter UNFCCC].

Review of the Financial Mechanism, Decision 8/CP.18, FCCC/CP/2012/8/Add.1 (Dist. Feb. 28, 2013)

The World Bank Group, *The Economics of Adaptation to Climate Change* 3 (Aug. 2010), *available at* http://siteresources.worldbank.org/EXTCC/Resources/EACC_FinalSynthesisReport0803_2010.pdf.

Third World Network, TWN Info Service on Climate Change, Green Climate Fund: Disagreement over Mobilizing Resources, http://www.twnside.org.sg/title2/climate/info.service/2013/climate130303.htm

Third World Network, *Green Fund discusses country ownership and readiness support*, blog (Mar. 4, 2014), http://www.twnside.org.sg/title2/climate/info. service/2014/cc140302.htm

Third World Network Info Service on Climate Change, UNFCCC: outcome of 6th meeting of Standing Committee on Finance, http://www.twnside.org.sg/title2/climate/info.service/2014/cc140306.htm (Mar. 26, 2014).

Kyoto Protocol, *Adaptation Fund*, Decision 1/CMP.3, FCCC/KP/CMP/2007/9/Add.1 (Dist. 2008)

Kyoto Protocol, *Adaptation Fund*, Decision 1/CMP.4, FCCC/KP/CMP/2008/11/Add. 2, ¶ 11 Dist. Mar. 19, 2009).

Kyoto Protocol, *Adaptation Fund*, Decision 5/CMP.2, FCCC/KP/CMP/2006/10/Add. 1, ¶ 3 (Dist. Mar. 2, 2007).

Vivid Economics, African Development Bank, Operationalising the Green Climate Fund: Enabling African Access, 2, *available at*: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Operationalising%20the%20Green%20Climate%20Fund-Enabling%20African%20Access.pdf.

Yulia Yamineva & Kati Kulovesi, *Chapter 9: The New Framework for Climate Finance Under the United Nations Framework Convention on Climate Change: A Breakthrough or an Empty Promise?*, 21 IUS Gentium 191, 200 (2013).

<국문초록>

녹색기후기금: 유엔기후변화협약 재원기관간의 상보성 및 일관성 달성

Erica Lyman*

녹색기후기금은 기후변화협상의 최대 성과로 평가되고 있지만 기후기금의 진정한 역할은 아직 구체화되지 않았다. 많은 쟁점들이 미해결 상태이며 기후재정협상을 지배했던 선진국과 개도국의 반목이 기후기금을 둘러싼 협상에서도 재현되고 있기 때문이다. 이러한 장애를 극복해야 하는 녹색기후기금의 전면적이고 탄탄한 운영과 기후변화 대응력은 여전히 불확실하다. 사실, 협상 참가자들은 녹색기후기금의 재원마련을 위한 목표에 대한 협의조차 없이 2014년 6월 재원동원을 위한 최초의 회의를 끝냈다. 기후변화기금과 그리고 더 포괄적인 의미에서 현재 분절화된 기후기금체계의 목표달성을 위해 중요한 것은 기후변화협약 하 설립된 다양한 기금들의 거버넌스와 운용실태를 이해하는 것 뿐 아니라 역사적으로 반복된 주요 논쟁을 심층적으로 분석하고 이해하는 것이다. 본 논문은 이러한 배경들을 종합하여 담고 있다. 본 논문이 만병통치약은 아니지만, 하나의 대안으로 재정상설위원회(Standing Committee)와 국가지정기관(Designated National Authorities)을 전략적으로 활용하는 하향식 또는 상향식 접근을 제안한다. 이를 통해 적어도 효율적이며 효과적인 기후재정의 방향성을 제시하고자 한다.

주제어 : 녹색기후기금, 기후재정, 기후변화, 유엔기후변화협약, 지구환경기금

* 루이스앤클락 로스쿨 클리닉 교수