



Nairobi 2006:

Trust and the Future of Adaptation Funding

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Executive Summary and Abstract

Abstract. The decision at the recent UN climate change conference in Nairobi to adopt a ‘one-country-one-vote’ procedure for the governance of the Kyoto Protocol Adaptation Fund could help secure political acceptance for that fund, particularly among the many small and weaker constituents. But only if voting can be guaranteed. This paper argues that in order to safeguard the voice of these constituents, the voting procedure should be augmented by the right for (groups of) countries to *force a secret* vote, and to introduce motions to be decided by the Adaptation Fund governing body.

The decision, in turn, to place the Adaptation Fund under the direct authority of the Kyoto Protocol governing body (COP/MOP) implies, the paper argues, that the climate change (UNFCCC) focal points of the relevant countries should be the voting constituency, and that they should have their own representative committee – selected by the COP/MOP – on the executive body of the Adaptation Fund.

The Kyoto Protocol Adaptation Fund (AF) is unique in a number of different respects, each contributing to its importance in the international climate change negotiations and beyond.

The purpose of this piece is twofold. The narrow purpose is (i) to give an account of the recent AF negotiations up to and including the relevant Decision taken at the recent UN climate conference in Nairobi/Kenya, (ii) to provide a degree of insight into the motivations that lay behind some of the positions that led to this decision, and in doing so (iii) to lay bare some of the shortcomings of the current governance model for such international (environmental) funds, with the aim (iv) to suggest some concrete governance models that could be used in implementing this Decision that would remedy these shortcomings.

The broader purpose is to use the AF as a case study to illustrate the long-term importance of equitable governance and political acceptability over and above efficiency and effectiveness for international institutions such as the AF.

a) *Why bother? The Uniqueness of the AF*

Politically, for one, the AF – unlike the other climate change funds – was created under the Kyoto Protocol. This puts it outside the direct sphere of influence of countries which – like the United States – have not ratified that protocol. At the same time it meant that the European Union, as key Kyoto Party, has taken the lead in the negotiations on how the AF should be operated.

Then there is its revenue generation through a two-percent levy on the emission permits from projects under the Clean Development Mechanism (CDM). These projects are carried out in developing countries, to a large measure by private sector investors. The permits will be directly levied by an international body (the CDM Executive Board) and monetised and disbursed by the Adaptation Fund. In short, it is (possibly) the first genuinely international levy on private sector activities, which – given the potential for setting a precedent – is likely to make this the most important of the AF’s unique features.

The Adaptation Fund is also unique among climate change funds with regard to its potential size, certainly as regards funding for adaptation. The revenue generated from the CDM levy until 2012 alone is projected to be between \$160m and \$950m, while the funding presently given to or pledged by donor countries to the other two climate change funds is around \$170m. As it is politically highly unlikely that bilateral donations could ever cover the estimated tens of billions of €\$ of adaptation cost in developing countries, alternative sources of revenue such as the CDM adaptation levy – or the recently proposed International Air Travel Adaptation Levy (IATAL), itself estimated to generate €\$4–10bn annually – are key to overcoming the ‘adaptation funding deficit’ in developing countries.ⁱ

ⁱ For more on these issues see: (a) Benito Müller and Cameron Hepburn, *IATAL — an outline proposal for an International Air Travel Adaptation Levy*, EV36, Oxford: Oxford Institute for Energy Studies, October

And it stands to reason that the Adaptation Fund will be the natural home for this sort of international adaptation levy.

b) *Progress through Informal Dialogue: The AF Negotiations*

Bonn, May 2006. The last round of Adaptation Fund negotiations in the former German capital of Bonn had unfortunately been rife with acrimonious exchanges and a great deal of distrust between developed and developing countries. One of the main points of contention was whether the Washington-based Global Environment Facility (GEF) should be managing the Fund or not. The European Union, Japan and other industrialised countries saw GEF management as self-evident. Many developing countries, however, were unhappy with the way the GEF had been managing climate change funding in general, and adaptation funding in particular, with the consequence that the negotiations six months prior to Nairobi had ended in an apparently insurmountable stalemate between the pro GEF faction led by the EU, and the developing country Group of 77 and China, rejecting the idea of giving the management of the AF to the GEF.ⁱ

There was certainly not a great deal of hope that the next round of negotiations in Nairobi would be able to come to a conclusion, let alone one which was generally lauded as a significant step forward and considerable success. Indeed, given the constructive atmosphere in which these negotiations were resumed in Nairobi – with all the key Parties agreeing to focus on principle and general modalities, rather than on the ‘GEF/not GEF’ controversy – something must have happened in the meantime that brought about this radical change in atmosphere. But what?

The Road to Nairobi. Key to the transformation was the realisation on both sides of the ‘GEF-divide’ that a continuation of this institution-centred debate would not be fruitful, and the fact that the EU decided to ‘go into listening mode’. Another important element was the fact that the G77 and China, as well as other key developing country groupings (Africa Group, LDC Group, AOSIS) returned to the negotiations with a coordinated position, and that this position was not a surprise to the EU, their main negotiating partner.

After the debacle of Bonn, there had been informal consultations on the matter in the run-up to Nairobi, among them not insignificantly – according to the chair of the LDC Groupⁱⁱ – a seminar organised in Oxford by the Fellowship Programme of the *European Capacity Building Initiative (ecbiⁱⁱⁱ)*, bringing together a number of leading EU and developing country negotiators. It stands to reason that the presentation of the developing country Fellows’ views on the Adaptation Fund governance to the European participants at this event – and their subsequent publication by three LDC negotiators^{iv} – helped to create the non-confrontational atmosphere at the outset of the Nairobi negotiations.

Nairobi, November 2006. The key elements of the Nairobi decision which will make the AF differ even more from the other funds concern governance. For one, it was decided that the AF should be under the direct *authority* of the Kyoto Protocol governing body (the ‘COP/MOP’). The operations of the two Convention funds – managed by the GEF – by contrast are merely subject to ‘guidance’ from the climate change process, but not to its binding decisions. And it was very clear at Nairobi, that the decision to give the COP/MOP authority over the AF was meant to imply a tighter control than was hitherto the case for funds merely guided by the climate change process.

2006, and (b) Benito Müller, *Adaptation Funding and the World Bank Investment Framework Initiative: Background Report* prepared for the Gleneagles Dialogue Government Working Groups, 2006. <http://www.oxfordenergy.org/pdfs/Gleneagles.pdf>

ⁱ For more on this, see Benito Müller, *Climate of Distrust: The 2006 Bonn Climate Change Adaptation Fund Negotiations*, Oxford Energy and Environment Comment, Oxford: OIES, June 2006. http://www.oxfordenergy.org/pdfs/comment_0606-1.pdf

ⁱⁱ http://www.eurocapacity.org/downloads/Bangladesh_Letter_of_Appreciation_2006.pdf

ⁱⁱⁱ www.EuroCapacity.org

^{iv} Amjad Abdullah, Bubu Pateh Jallow, and Mohammad Reazuddin, *Operationalising the Kyoto Protocol’s*

adaptation fund: A new proposal, IIED/ecbi, <http://www.eurocapacity.org/downloads/11061IIED.pdf>.

The second feature which will distinguish the AF from the other climate change funds is the voting procedure. The procedure presently applied in the case of the Convention funds – at least in theory, for there has never actually been a vote – is that of the GEF in which a majority of both countries and donations is required to carry a vote, the latter essentially giving veto power to the group of five largest donor countries. The Nairobi decision dispenses with this by stipulating that votes concerning the AF will have to be on the basis of ‘one-country-one-vote’ alone.

c) *Political Acceptability: Two Key Problems*

It stands to reason that whoever is going to manage the AF, decision-making will be representative, and consensus based – with the option for balloting the represented constituencies (on the prescribed ‘one-country-one-vote’ basis). During the informal discussions with developing country climate change negotiators at the ecbi Fellowships and regional workshops leading up to and at Nairobi, a couple of issues concerning present decision-making procedures of the GEF emerged that appear to have eroded political acceptability (‘buy-in’, ‘feeling of ownership’) of that organisation, particularly in the climate change circles of the smaller/poorer/politically weaker countries.

A ‘*democratic deficit*’. One of these key problems is that without additional safeguards, this sort of *de facto* consensus-based representative decision-making is, quite generally, susceptible to ‘backroom deals’ by the representatives of the powerful countries (across the ‘North/South divide’) beyond the control of the weaker constituents. It would be very difficult to judge whether the present GEF Council decision-making has actually involved such deals. However, given the fact that in the 15-year history of the GEF, there has actually never been a constituency vote, not even for the recently adopted highly controversial Resource Allocation Framework – according to which almost two-thirds of the \$751m climate change money allocated to individual countries goes to the ten largest recipients (among them three OECD countries)ⁱ and 1 percent to the LDC members on the list – it cannot be surprising that over the years the perception of this sort of deficit has arisen and consequently weakened the political acceptability of the system, particularly among the poorer and weaker country delegations.

A ‘*substantive deficit*’. Countries more often than not choose their GEF focal points from ministries/agencies – such as treasury, foreign office, donor agencies – other and more powerful than the one responsible for climate change, and the two do not necessarily share the same priorities. This raises the potential of GEF Council priorities also differing from the ones prevailing in the ministries/agencies responsible for climate change. The choice of representative is, of course, a country’s sovereign prerogative. However, as collective global representation of climate change concerns, the COP/MOP also has the right to ensure that country representatives in bodies under its authority respect these collective concerns regardless of which ministry they hail from. It was the fact that a significant number of COP/MOP delegates felt that certain GEF council decisions did not adequately reflect these concerns under the existing guidance that led to the very unusual step in Nairobi of revisiting the decision concerning the relationship between the COP/MOP and the AF (taken at the preceding session in Montreal) and augmenting it by putting the AF under the authority of the COP/MOP. And it is crucial for regaining the lost political acceptance that measures be taken to safeguard these COP/MOP concerns in the decision-making of the AF.

d) *Possible Solutions: Democratic Safeguards and Direct Representation of Interests*

The architectural elements for governing an entity such as the AF are well-established: apart from a trustee and implementing agencies, there is a core given (as illustrated in Figure 1.a) by a secretariat under the authority of an executive body – the ‘AF Executive Council’ (AFEC) – itself under the authority of a governing body, which in the case of the AF – given the Nairobi decision on the locus of authority (Article 1.e) – would clearly have to be the COP/MOP.

ⁱ China (20%), India (10%), Russian Federation (EIT, 10%), Brazil (5%), Poland (OECD, 5%), Mexico (OECD, 4%), South Africa (3%), Ukraine (EIT, 3%), Turkey (OECD, 2%), Iran (2%).

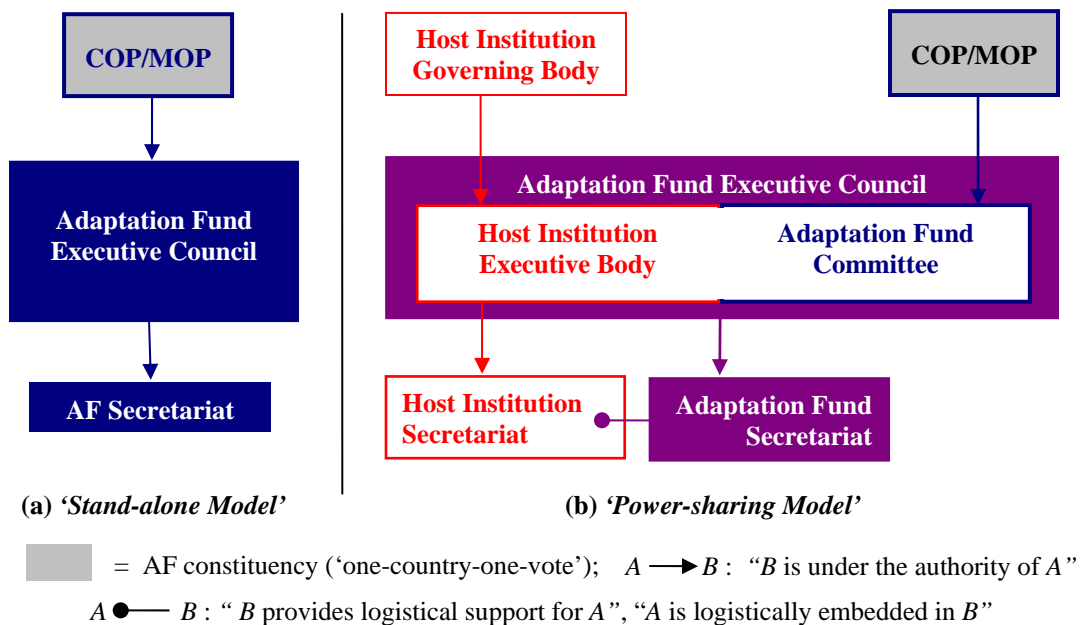


Figure 1: Core Governance Options

The 'democratic deficit' can easily be resolved by augmenting the ('one-country-one-vote') voting mechanism with the direct democracy procedures of *initiatives* and *referenda* for (groups of) members of the constituency. That is to say, as AF constituency, the COP/MOP Parties – through the relevant UNFCCC focal points – should not only have the right to vote on AF issues, but they should also be given the democratic right (possibly subject to certain numerical restrictions) to table motions for the AFEC and to force a ballot *whether or not they are members of the AFEC*.

These democratic safeguards – particularly the designation of the COP/MOP (UNFCCC focal points) as AF constituency – should also provide some help in overcoming the second of the aforementioned problems, the 'substantive shortcoming'. However, probably the best way forward in that respect would be for the COP/MOP to elect an Adaptation Fund Committee (AFC) to represent its interest directly in the decision-making of the AF, if only to make referenda and initiatives measures of last resort.

There are essentially two ways of implementing these solutions in a governance structure (Figure 1), namely a 'stand-alone model' in which the AFC becomes the executive body of the AF (the 'AF Executive Council'), and a 'power-sharing model', in which decision-making is shared with the executive body of a 'host institution' (such as the GEF, UNDP etc.)

In the power-sharing model (Figure 1.b), the AFC would be under the sole authority of the COP/MOP, while the host institution executive body could remain under the sole authority of its governing body. They would meet and take decisions jointly as the AF Executive Council, the executive body of the AF. As to the membership of the AFC, there are two options, namely

- (i) Kyoto Protocol Parties, chosen to represent certain COP/MOP constituencies, or

- (ii) individuals, chosen for their expertise, who as ‘COP/MOP officers’ would represent the COP/MOP as a whole, provided that they are given equal decision-making status as all other members (if any) of the AFEC.ⁱ

To facilitate the task of generating political acceptability (‘buy-in’, ‘ownership’) of AF decisions in COP/MOP circles, the members of the AFC should be designated focal points for groups of COP/MOP Parties (be it on geographical and/or interest-based criteria) with which they liaise and carry out ballots (both through the relevant UNFCCC focal points). In other words, each Kyoto Party UNFCCC focal point should be kept informed, and – if required – polled by a designated AFC member (the relevant ‘AFC focal point’).

A committee like the suggested AFC may indeed be needed for (formal) reasons other than generating political acceptability, namely to represent the owners of the AF money – regardless of who they areⁱⁱ – to take up the function of donor agencies in multilateral donor funds, for example in signing the AF trust fund administration agreement(s).

The power-sharing model – even though slightly more complex – may well be superior to the stand-alone one, since it stands to reason that in order to function effectively, the AF would not be served adequately if its executive body was only representing climate change concerns. The addition of financial and/or developmental expertise are bound to make the power-sharing model superior to the stand-alone one, as long as the sharing of power is genuine, and all sides feel adequately involved in the process.

e) *The Way Forward: Three Steps towards Political Acceptability*

The best way to proceed in order to achieve a consensus on the institutional arrangements for the AF would seem to be to try to keep open as many options as possible while addressing as many aspects of the mentioned key problems as possible.

- ✦ A first step in this direction might be to adopt amendments to Art 3 (i) specifying explicitly the COP/MOP – and, to be more precise, the relevant UNFCCC focal points – as the constituency for voting under the AF, and introducing the rule that a certain number (say three or five) of Parties can (ii) introduce motions in the AF Executive Council, and (iii) force a (secret) vote on AF Executive Council decisions/issues under consideration. This will remedy the discussed ‘democratic deficit’ while leaving all the mentioned governance options open.
- ✦ Secondly, create a COP/MOP Adaptation Fund Committee under the authority of the COP/MOP, either to serve as stand-alone executive body of the Fund, or to serve as COP/MOP representation in it. This will remedy the mentioned ‘substantive shortcoming’ while leaving both the ‘stand-alone’ and the ‘power-sharing’ options open.
- ✦ Finally, it may be useful to assure that the AF Secretariat is under the direct authority of the AFEC, with a head reporting directly and only to that body.

These measures should help generate the political acceptance of whatever the institutional arrangements for the AF will turn out to be, for the AF to be the desired long-term success. To be sure political acceptance, by itself, is not sufficient to guarantee such a success, but it is a necessary precondition, which is why it is hoped that the measures suggested here would prove successful in overcoming the perceived shortcomings that led to the erosion of trust in the present decision-making system.

ⁱ Note, in particular, that while the procedural rules for the GEF Council in Art 11 permit the possibility of inviting UNFCCC representatives to attend regular Council meetings, they clearly do not have Council member status.

ⁱⁱ The ownership of the CERs levied for the AF has been a very contentious issue, essentially about the relation of private property (CERs) to some form of derivative ‘sovereign ownership’. While this cannot be discussed here, the fairest and most practicable solution in the longer term seems to be on reflection to assign ownership to the COP/MOP as a whole, to include even Parties (such as the LDCs) whose projects are exempt from the levy.

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I. From Bonn to Nairobi

1.1 *What a difference half a year makes!*

The last round of negotiations on the Adaptation Fund (AF) in May 2006 in the former German capital of Bonn ended in a tragic farce acted out chiefly between Austria, representing the European Union (EU), the Philippines, representing the G77+China, and the presiding Chair of the UNFCCC Subsidiary Body on Implementation (SBI), culminating in the supremely sarcastic but telling comment by Saudi Arabia who wished ‘to highlight to the plenary, and to our partners, and to everyone here, how *very, very* constructive [all] this has been for building trust between non-Annex I and Annex I countries.’ⁱ

The reason for this break-down was the issue of who should be entrusted with the management of this Fund, or, to be more precise, whether it should be the Washington-based Global Environment Facility (GEF) or not. In light of the GEF already running two other UN climate change funds, and based on the outcome of a prior workshop on the matter and on an opinion piece by the UN climate change Secretariat^{ii, 1,iii} the EU (and other industrialised countries^{iv}) saw GEF management as self-evident.^v Yet that was not to be. Many developing countries, particularly smaller ones, did – and, given some of the recent decisions of the UNFCCC Conference of Parties (COP), apparently still do² – see the GEF’s management procedures as extremely cumbersome and inefficient.^{vi} With the ensuing acrimonious ‘debate’ on the merits and demerits of the GEF, the meeting ended in what six months later at the following SBI session in Nairobi the Chairman rather euphemistically described as a ‘non-constructive atmosphere’.³

In light of these events, it might seem surprising that during this Nairobi Session,^{vii} the Philippines, on behalf of the Group of 77 and China, used the SBI plenary ‘to thank ... all our partners for the cooperation and goodwill, in particular the European Union, led by Mr. Jukka Uosukainen of Finland’,⁴ and that Finland, on behalf of European Union, in turn, expressed his thank ‘especially [to] our partners in negotiations, and of course [the Philippines] Ambassador Berneditas Müller, who has been able to guide us with all her knowledge of articles and principles – as this was definitely a work where we needed all the strategic wisdom of our senior partners. I’m looking forward to the next year with new enthusiasm.’⁵

ⁱ For more on this, see Benito Müller, “Climate of Distrust: The 2006 Bonn Climate Change Adaptation Fund Negotiations” OIES Comment, June 2006, available at www.OxfordClimatePolicy.org, and www.OxfordEnergy.org.

ⁱⁱ FCCC/SBI/2005/19, 15 September 2005, available at <http://unfccc.int/resource/docs/2005/sbi/eng/19.pdf>,

ⁱⁱⁱ Endnotes, numbered with Arabic numerals, are used to establish cross-references to passages in the separately available Appendices and are listed in the first of them.

^{iv} According to the initial submissions from Parties (prior to the Bonn Session) the EU, Canada, Japan, Switzerland, and Uruguay were explicitly for the GEF being given the mandate to operate the AF, while Egypt, Mexico, Philippines, Saudi Arabia, South Africa, and AOSIS were at best ambiguous, with India wavering somewhere in between.

^v See Müller (2006).

^{vi} A problem apparently recognised by the new GEF CEO, Monique Barbut, who in Nairobi emphasised she was ‘leading the GEF through a vigorous streamlining and recasting’ [See Appendix B:3]

^{vii} Fourth meeting, Tuesday, 14 November 2006, 5–9pm.

The ‘work’ in question was, of course, the negotiations at Nairobi that ultimately led to the adoption of a (COP/MOP2) Decision on the Adaptation Fund. With the Bonn negotiations having ended the way they had, one may be forgiven for wondering what could have brought about this astonishing change in ‘atmospheric chemistry’? What made it possible for the positive spirit of Nairobi to prevail – as the final press release of the UNFCCC Secretariat put it?

One element which is likely to have made a difference is that negotiations were ruled to finish by 6pm. This meant that negotiators were actually allowed to admit – at least at the beginning of the conference – that, like everyone else, they need sleep to function as human beings. Yet lack of sleep deprivation during the negotiation, while important, by itself does not explain the success at Nairobi. Another element which was of importance was the fact that the G77 and China, as well as other key developing country groupings (Africa Group, LDC Group, AOSIS) came to the negotiations with a coordinated position, and that this position was not a surprise to the EU, their main negotiating partner. After the debacle of Bonn, there had been a number of informal consultations on the matter in the run up to Nairobi, among them not insignificantly – according to the chair of the LDC Group⁶ – the Oxford Fellowships of the *European capacity building initiative* (ecbi¹), with the Oxford Seminar that brought together the developing country Fellows with leading European negotiators.

1.2. The Oxford Seminar

An opinion piece on *Operationalising the Kyoto Protocol’s Adaptation Fund: A new proposal*ⁱⁱ – published just before the Nairobi climate conference by three leading LDC negotiators from the Maldives (AOSIS), the Gambia (Africa Group), and Bangladesh (LDC chair) – brought to the attention of a wider public a proposal which was put forward by some of the ecbi Oxford Fellows (including two of the authors) at the August 2006 Oxford Seminar.

A key message of this proposal was that one ought to ‘avoid trying to rush the operationalisation of the Adaptation Fund by forcing a choice between a number of existing agencies. It is more important to decide on a mutually satisfactory governance structure for this fund which institutions would have to satisfy to become an operational entity of the Adaptation Fund.’ⁱⁱⁱ Instead of debating the merits of specific institutions which have been put forward as potential operating entities of the Adaptation Fund, the Fellows’ proposal thus focused on an ‘architectural’ framework – a number of necessary characteristics – for such an operating entity, based on two principles, namely:

- The decision-making processes of the Adaptation Fund should be flexible, transparent and uncomplicated. They should be balanced and reflect the needs of the developing country Parties to the Kyoto Protocol.
- Funding should be reliable and adequate and on the basis of covering the full costs of adaptation.

ⁱ www.eurocapacity.org

ⁱⁱ Amjad Abdullah, Bubu Pateh Jallow, and Mohammad Reazuddin (2006), “Operationalising the Kyoto Protocol’s adaptation fund: A new proposal”, London/Oxford: IIED/ecbi. 26 October 2006. Available at <http://www.eurocapacity.org/downloads/11061IIED.pdf>

ⁱⁱⁱ Abdullah *et al.* (2006).

The framework was focused on how the Adaptation Fund should be governed. The Executive Body of the Fund, it was proposed, should be under the *direct authority* of the COP/MOP: the COP/MOP should take binding decisions concerning that body, and not merely issue guidance. As to the balanced representation of the KP Parties on the Executive Body, the proposal was to use the formula of the Compliance Committee and the CDM Executive Board, with the addition of an extra LDC representative. Procedurally, the AF Executive Body was also meant to follow the example of these existing bodies (i.e. to take decisions by consensus and, if impossible, by ¾ majority of the members present and voting). Developing country Parties to the Kyoto Protocol were meant to be eligible for funds from the Adaptation Fund to meet costs of adapting to climate change; and the funding was to be directed particularly to activities benefiting the most vulnerable communities

Many of the points raised in the Oxford Proposal had, of course, been raised previously, be it in the initial submissions by Parties on the subject matters,⁷ and not least in the list of questions which the G77 and China had submitted to institutions interested in becoming an operational entity of the Adaptation Fund ‘to assist the Group in its evaluation of this matter,’ⁱ in particular:ⁱⁱ

Question 1. How would you work under the authority of and follow the guidance of the COP/MOP?

Question 11. What decision-making structure would you apply to the operation/management of the Adaptation Fund?

Question 15. How would you propose to handle the Adaptation Fund in the context of a possible management committee established by the COP/MOP?

What may have been the added value was the fact that these proposals could be discussed with key European colleagues in the informal and congenial setting of Oxford’s dreaming spires, leading one of them to summarise as his key point of the discussions the fact that ‘it is possible to move the debate forward from the sterile discussion on GEF/not GEF.’

The Fellows’ proposal and the discussions of the Oxford Seminar were subsequently taken away from Oxford and discussed not only in the respective developing country delegations and groupings, but also in the EU preparations for the Adaptation Fund negotiations, which was arguably one of the factors that led to the implicit consensus in the opening session of the AF negotiations to avoid the hitherto fruitless debate on institutions in favour of a discussion on principles and modalities for the running of the AF.

1.3. The Nairobi Adaptation Fund Decision

On recommendation of the SBI, the COP/MOP decided in Nairobi that the AF should be guided by eight principles and operate with ten modalities. It is difficult to provide publicly available evidence for the different negotiation positions that went into this

ⁱ FCCC/SBI/2006/MISC.11

ⁱⁱ At Bonn, the SBI requested interested institutions to submit information on the issues referred to in the initial Party submissions and the G77 and China questionnaire. Of the three institutions which did respond to the request (GEF, UNDP, The Montreal Protocol Fund, see FCCC/SBI/2006/MISC.16), only the GEF addressed the G77 and China questionnaire directly, but still without providing genuine answers to these three key governance questions.

Decision. Probably the only way to at least get an idea is to consider the relevant opening plenary statements.

Developing Country (non-Annex I) Party Statements

Group of 77 and China. The initial G77+China SBI plenary statement in Nairobi urged Parties to ‘agree on a very clear set of *principles, governance structure, decision making processes, modalities, programme priority areas*, prior to any discussions on any specific institution or institutions to manage the fund’ and concluded that the AF should be managed ‘*fully under the authority and guidance and be accountable to the COP/MOP*’ and, somewhat enigmatically, that its governance structure should ‘reflect the main source of funding for the Adaptation Fund’ i.e. the adaptation levy on the CDM.ⁱ The statement concluded with a demand for *full adaptation cost funding*, and a taking into account of participating country interests.

Least Developed Country Group. In addition to the points emphasised by G77+China, the spokesman for the Group of LDCs emphasised that the *executive body of the AF should be structured like ‘other executive bodies such as the CDM Executive Board, with an extra representation for the Least Developed Countries, as LDCs are the most vulnerable and they need the support most’*.

Alliance of Small Island States. AOSIS – emphasising their status as particularly vulnerable Parties – were keen to see a speedy operationalisation of the AF and proposed that the CDM levy should *only* be used for such countries, while others could make use of additional revenue streams. As G77+China, they supported full adaptation cost funding.

Individual non-Annex I Parties. As to individual interventions from developing countries, the most highlighted theme was that while a speedy operationalisation is important (China, Egypt, Chile, Mauritius), the Fund’s architecture – principles, modalities, etc. – would have to be decided before turning to institutional matters (Indonesia, Egypt, Chile, Mauritius). Other G77+China points, explicitly supported by individual Party interventions, were the COP/MOP authority over the AF (Brazil, Argentina, Gambia) and full adaptation cost funding (Micronesia). In addition to the issues mentioned in the group statement, a number of G77+China members highlighted the need for transparency and flexibility of modalities (Micronesia, Argentina, Gambia), and for funding concrete adaptation projects ‘on the ground’ (Micronesia, Mauritius)

The LDC point of balanced regional representation was also taken up (Micronesia, Gambia). China highlighted the need for efficiency in the operation of the Fund, while Indonesia felt it necessary ‘to emphasise that the future institution we choose should follow the guidance of the COP/MOP, not the other way around!’

Industrialised (Annex I) Parties

European Union. Finland, on behalf of the EU, listed a number of themes for which they hoped agreement would be possible, namely
✦ on the overall purpose of the Fund (*‘concrete adaptation projects’*),

ⁱ Given the preceding debate, it would seem that this is meant to imply that AF decision-making should be weighed in favour of developing countries.

- ✦ on eligibility (*'vulnerable countries'*), and
- ✦ on operational modalities (*'response to developing country needs as defined in development and adaptation strategies'*).

Concerning the governance and management of the Fund, further consideration of the options was seen to be necessary, but it was believed that 'there is a common interest in ensuring an *efficient, effective and transparent* governance and operational structure of the Adaptation Fund.'

Individual Annex I Parties. Norway also noted a large measure of agreement for a number of principles, namely '*country-driven approach, transparency, democratic governance, effectiveness, knowledge and networking capacity, efficient access for the most vulnerable countries, importance of integrating adaptation into development efforts.*' The need for integrating adaptation into national development planning processes was also one of the main themes of the intervention by Japan, the other one being the slightly more general view that the role of the UNFCCC should be to coordinate the 'many activities in relation to adaptation to climate change [that] have been happening inside and outside of the UNFCCC process.'

For many of the points mentioned in these Annex I statements there was indeed a large measure of agreement within Annex I and non-Annex I alike. The main disagreement across the Annex I divide was on whether a decision on institutional matters would have to wait until after a decision on principles etc. was taken (G77+China) or whether the GEF should be selected prior to such a decision (Norway, Switzerland, Japan).

As always, there are bound to be many reasons why the G77+China position prevailed. For one, there is the fact that there was such a position in the first place, and the support it mustered within the Group. Then there was the fact of the willingness of the EU to be agnostic on the issue and the fact that no mention was made of the GEF or any other potential host institution for the Fund. And finally, there was the somewhat robust call by the SBI chair 'to remember the *non-constructive* atmosphere we had in this room lastly it turned into a discussion for or against a specific institution!'

The Nairobi Decision

Judging from these opening statements, there was indeed consensus on a number of issues among the Parties at the outset of the negotiations, which was not surprising in the case of points that were already decided on at COP/MOP1 in Montreal.ⁱ Yet, there were also some differences of focus, if not outright disagreements, such as whether the architecture should be decided on before the operating entity/ies. For the purpose of this paper, the main points to be gauged from these opening statements are the strength of the support given by the developing country delegations to the need to talk about principles and modalities first, and the need to have the AF under the direct authority of the COP/MOP, which found its way into Art 1.e of the Decision (see Table 1). Indeed, this article is surprising, insofar as the issue of the relationship between the AF and the COP/MOP had already been decided on in Decision 28/CMP.1 in Montreal, according to which the AF 'shall function under the guidance of, and be accountable to,' the COP/MOP. Given that it is not usual to revisit decisions – particularly recent ones – it

ⁱ See Decision 28/CMP.1, as indicated in Table 1.

thus stands to reason that the addition of ‘under the authority’ is not just a redundant word play (i.e. meaning nothing more than being under the guidance), but at the core of the developing country position – as evidenced also in Brazil’s opening statement. To understand the concerns that led to the Southern focus, one needs to consider briefly the history of international climate change fund management.

Table 1: The Nairobi AF Decision

1	<i>Decides</i> that the Adaptation Fund shall be guided by the following principles:	
(a)	A share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation;	28/CMP.1, EU, AOSIS
(b)	Access to the fund in a balanced and equitable manner for eligible countries;	LDC
(c)	Transparency and openness in the governance of the fund;	Norway, EU, Micronesia, Argentina, Gambia
(d)	Funding on full adaptation cost basis of projects and programmes to address the adverse effects of climate change;	G77, AOSIS, Micronesia
(e)	The Adaptation Fund should operate under the authority and guidance of and be accountable to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol which shall decide on its overall policies;	(28/CMP.1), G77, Brazil, Argentina, Gambia
(f)	Accountability in management, operation and use of the funds;	
(g)	No duplication with other sources of funding for adaptation in the use of the Adaptation Fund;	28/CMP.1
(h)	Efficiency and effectiveness in the management, operation and governance of the fund;	Norway, EU
2	<i>Decides</i> that the Adaptation Fund shall operate with the following modalities:	
(a)	Funding for eligible Parties will be available for national, regional and community level activities;	
(b)	Facilitative procedures for accessing funds, including short and efficient project development and approval cycles and expedited processing of eligible activities;	Norway
(c)	Projects should be country driven and should clearly be based on needs, views and priorities of eligible Parties, taking into account, inter alia, national sustainable development strategies, poverty reduction strategies, national communications and national adaptation programmes of action and other relevant instruments, where they exist;	28/CMP.1, G77, Norway, Japan
(d)	Funding shall be available for concrete adaptation projects and programmes in eligible countries;	28/CMP.1, EU, Micronesia, Mauritius
(e)	Ability to receive contributions from other sources of funding;	
(f)	Competency in adaptation and financial management;	
(g)	Sound financial management, including the use of international fiduciary standards;	28/CMP.1
(h)	Clearly defined responsibilities for quality assurance, management and implementation;	
(i)	Independent monitoring, evaluation and financial audits;	
(j)	Learning by doing;	28/CMP.1
3	<i>Decides</i> that membership of the governing body of the Adaptation Fund shall be from Parties to the Kyoto Protocol, follow a one-country-one-vote rule and have a majority of Parties not included in Annex I to the Convention;	

2. The GEF and the Governance of the Adaptation Fund

Much of the governance debate that gave rise to the Nairobi Adaptation Fund decision arose in reaction to the Global Environment Facility (GEF), if only because it has thus far been the only operating entity for the financial mechanisms of the UN climate change regime. To get a better understanding of this debate, and particularly, to understand the point of view of many developing countries, one has to consider their past concern with the GEF management and governance.ⁱ

Ivo de Boer, Executive Secretary of the UNFCCC, summarised some of these concerns in his statement at a recent GEF Council meeting:⁸

In the course of the conference in Nairobi a **number of concerns** were raised by developing countries regarding the operation of the GEF that need to be considered very carefully. ... There was a strong call for the GEF to be **more responsive to the guidance** from the UNFCCC process and to get more connected to the work on the ground. Parties stressed the need for the GEF to **improve access to existing funding for adaptation** and to give closer consideration to adaptation concerns.

2.1 GEF Secretariat Submission in reply to the G77 and China Questionnaire

As mentioned earlier, these concerns gave rise to a list of written questions which the G77 and China put to potential operating entities of the AF in order to assess their suitability for the job (see Section 1.2), and it is interesting to see how the candidates who subsequently decided to declare an interest in the job dealt with the G77 and China ‘interview.’ To be more precise, it is interesting to see how the one institution which actually bothered to reply directly – namely the GEF (Secretariat) – chose to deal with the G77 and China ‘interview questions’, and particularly those pertaining to governance issues:

- ✦ In reply to the first of the G77 and China questions on how it would work under the *authority* and *guidance* of COP/MOP, the GEF Secretariat submission contains a three paragraph description⁹ of its *modus operandi* under the guidance of the COP, with a final paragraph confirming the GEF Council’s intention to work under the *guidance* of the COP/MOP, but with no mention of operating under its – or anyone else’s – *authority*.ⁱⁱ
- ✦ With respect to question 15 on how the GEF would interact with a potential AF ‘management committee’ of the COP/MOP, the GEF Secretariat submission refers to the need for Council consideration of the matter, referring somewhat enigmatically to paragraph 20g of the GEF Instrument, according to which the Council serves ‘as the focal point for the purpose of relations with the Conferences of the Parties’. It is not clear what this reference is meant to imply. Could it be an indication that such a committee would be incompatible with the GEF Instrument, at least if it were to function as the point of contact with the COP/MOP?

ⁱ To be fair, many of the general issues that have proven to be problematic are equally likely to be so for the other contenders for the job of operating entities of the AF.

ⁱⁱ Note: the GEF is not the only institution which avoided answering the question of how they would work under the authority of the COP/MOP. The Montreal Fund submission, for example, simply stated that the MLF ‘is operating under the authority of the Parties to the Montreal Protocol’ (see Appendix F:4).

- ✦ As to question 11 on the decision-making structures that would be applied to the AF, the GEF (Secretariat) submission refers to a forthcoming Special Council meeting (Johannesburg, August 2006) which would be reviewing ‘issues related to the governance of the climate change funds established by the seventh session of the COP [which] includes the AF’.

It is difficult to gauge how the GEF was assessed in light of these answers, but given the subsequent events it stands to reason that they failed to be completely convincing. At the same time, the mere fact that an effort was made to address the questions at all ought to have generated some good-will.

2.2 The GEF Council and Constituencies: Two key problems

At the Johannesburg meeting, the GEF Council decided ‘that in the case of the AF, the Council would meet *as the Council for the AF* [‘AF-Council’]. Decisions of the Council on matters concerning the operation of the fund would be taken by consensus among all Council Members representing Participants that are parties to the Kyoto Protocol.^{i, 10}

As it happens, this decision contains in a nutshell the main points of contention which led, for example, to the Oxford Fellowship proposal demands for the direct authority of COP/MOP over the AF, and the representation of key interest groups (AOSIS, LDCs) on the AF Executive Body.

To be sure, it may well be true that the discontent which led to these demands is based on misperceptions, and that the problems with the GEF (climate change) decision-making procedures identified below do not really exist, but that is ultimately irrelevant. What does count is that the procedures were not safeguarded against such perceptions leading to a loss of political acceptance (‘ownership’, ‘buy-in’), and that it is important to avoid the same to happen in the case of the Adaptation Fund.

2.2.1 A ‘Substantive Shortcoming’

One might indeed be somewhat bemused by the demands put forward by the Oxford Fellows. Why should it be of importance for the COP/MOP to have authority, say, over the proposed GEF AF-Council? After all, this AF-Council would presumably be under the authority of (the Kyoto Parties of) the GEF Assembly, i.e. the very same countries that are in the COP/MOP. The problem with this sort of reasoning is that it presupposes governments to be genuinely ‘joined up,’ acting as single unified decision makers. Unfortunately, this is not always the case. Moreover, multi-agent decisions generally depend on which interested body (ministry/agency) has the lead. In other words, the substance of (multilateral) decisions depends, more likely than not, on which ministries/agencies are taking the lead/sitting at the table.

Figure 2 illustrates the shares of ministries/agencies represented on the GEF (Trust Fund) Council at the time of writing. Less than one-third of Council members are from an environment ministry/agency (and most of those from developing countries). Almost half are from financial institutions (World Bank or Economics/Finance Ministries) or donor agencies, with a majority from OECD countries. And it stands to reason that a similar

ⁱ This means the USA would be out, but Australia in, since it has New Zealand and South Korea in its constituency.

picture would emerge for the GEF political focal pointsⁱ in the individual participating countries. This – together with the GEF’s voting rules and mode of replenishment – has meant that, at the political level, GEF decision-making represents – or is perceived by many to represent – predominantly financial/ODA concerns.ⁱⁱ

Since the decisions in question are about funding, such concerns are no doubt appropriate and should be taken into account. The problem arises if this is (perceived to be) done at the expense of other relevant substantive concerns; in other words, if other important interests perceive themselves to be side-lined by the process. This seems to be what happened with the lead interests represented in the COP/MOP decision-making process, who felt that the model of ‘giving guidance’ to an operating entity has not been satisfactory and who consequently felt it necessary in Nairobi to assert their voice by stipulating that they should have direct authority over the AF.ⁱⁱⁱ

The differentiation between ‘being (merely) given guidance by’ and ‘being under the authority of’ the COP/MOP introduced in Nairobi thus reflects a sense that climate change concerns have not been sufficiently taken into account in the present ‘guidance-based’ decision-making model of the Convention Funds. The question of how this could be remedied will be addressed in Section 3.2. However, as concerns the GEF, it is unlikely that introducing a new name (‘AF-Council’) for the existing executive body alone will do the job.

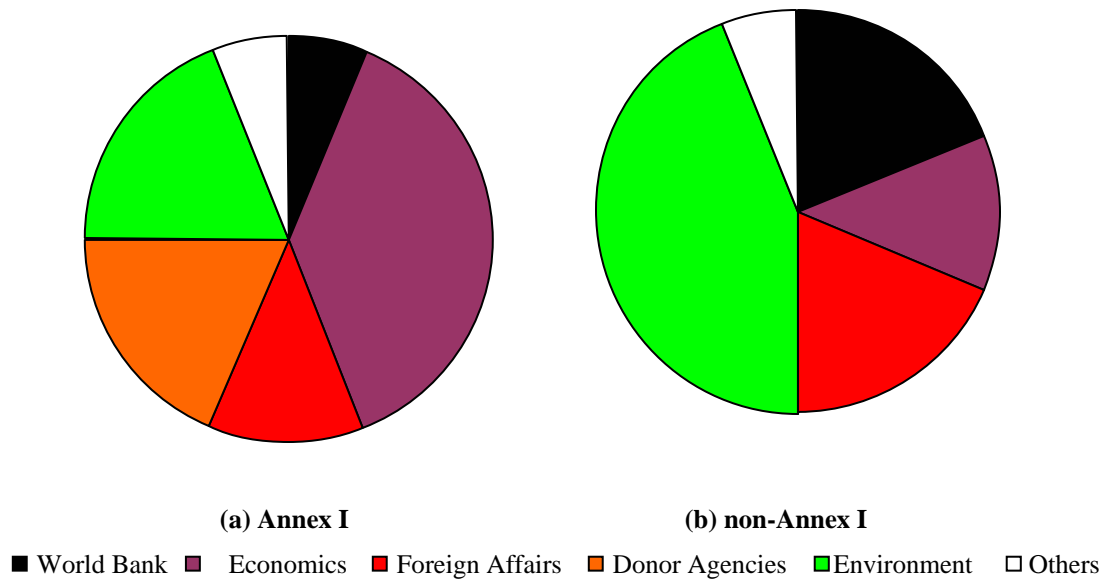


Figure 2: GEF Council Composition (2006)

ⁱ The Political/National focal point coordinates matters related to GEF governance, while Operational Focal Point oversees project-related matters [www.thegef.org/participants/Focal_Points/Focal_1/focal_1.html.]

ⁱⁱ The top five donors to the Trust Fund – US (Treasury), Japan (Finance), Germany (Donor), UK (Donor), France (Economics, Finance & Industry) – between them make up over 60% of total GEF-3 Contributions and can thus block any GEF vote, and they can always reinforce their positions by reference to the fact that replenishments are purely voluntary.

ⁱⁱⁱ To be fair, this is not necessarily a problem just for the GEF: the other candidates for hosting the AF might arguably face similar problems were they to operate the AF.

In sum, while the GEF Council members may be exemplary representatives of their constituencies, their constituents are the GEF focal points of the relevant countries who will generally not coincide with the UNFCCC focal points which represent their countries 'climate change concerns'. The problem arises when the GEF focal point fails to be in tune with these climate change concerns, be it due to a lack of communication or a divergence of interests combined with unequal standing in the government hierarchy resulting in a disinclination to listen. Of course, it is a government's sovereign prerogative to ignore these internal problems and to send whoever it chooses. However, the climate change concerns have managed to find a supra-national collective voice in the UN climate change regime, in general, and the Kyoto Protocol in particular. And the COP/MOP, as the governing body not only of the Kyoto Protocol, but also of its Adaptation Fund has an equal right to ensure that these collective climate change concerns are adequately taken into account in the decision-making of the AF executive body, whoever governments decide to delegate to this body. Political acceptability of the AF among COP/MOP delegations – more often than not led by the ministry/agency hosting the UNFCCC focal point – will be eroded if they feel they are unable to exercise this right.

2.2.2 'The Democratic Deficit'

Apart from the (perceived) under-representation of climate change concerns, there has also been a (perceived) lack of country representation in the GEF's political decision-making procedures – a lack which is independent of which agency/ministry is represented on the GEF Council.

GEF Council members represent a 'constituency'. In theory, they are thus meant to represent the interests of their constituents. The fact is that interests of representatives are not always aligned with – a majority of countries in – their constituencies, particularly if these constituencies are not interest groups, as in the case of the GEF.ⁱ And the harsh general political reality is that while powerful countries (North or South!) will usually manage to have their voice heard whether they sit at the table or not, the not-so-powerful-ones will not be able to make their voices heard without the help of some specific procedural safeguards.

This, of course, is where voting procedures could play a role. Indeed, if there were a vote, then Council members would have to go back to their constituencies, collect the votes, and report them to Council. But since only Council members can request a vote, non-members are entirely reliant on the good-will of their representatives to make their voices heard in the political decision-making of the GEF. Moreover – even though there is a voting procedure – *de facto* decision-making for the existing GEF funds is purely consensus-based, since there never has been a vote (and the same seems to be envisaged for the AF, incidentally not only by the GEF, but apparently also by other potential AF hosts such as UNDP).

It may or may not be surprising that this has given rise to a (perception of) disenfranchisement, particularly among the poorest and most vulnerable countries –

ⁱ The GEF constituencies are largely geographical, but there are some rather strange bedfellow constituencies, such as the one currently represented by Switzerland, namely Azerbaijan, Kazakhstan, Kyrgyz Republic, Switzerland, Tajikistan, Turkmenistan, Uzbekistan.

which in turn led to the ecbi Fellows' demand for direct representations of AOSIS and the LDC Group on the AF Executive Body, a demand that was re-iterated in the opening SBI plenary statement by Bangladesh on behalf of the LDCs. What is, however, certain is that a mere change in the voting modalities, such as the Nairobi decision's introduction of 'one-country-one-vote' – no matter how desirable in itself – will not be sufficient to remedy this democratic short-coming in *de facto* consensus decision-making.

2.3 The GEF 'Governance of the Climate Change Funds' (GCCF) paper

At a meeting of donors in Copenhagen in April 2006, the GEF Secretariat was requested: 'to explore whether and how the GEF could make arrangements to provide for decision making procedures, in particular a voting mechanism, which differ from those applied to the Global Environment Facility (GEF) Trust Fund'.ⁱ

The GEF Secretariat complied with this request by seeking legal advice from the World Bank, which it published in the above-mentioned paper on *Governance of the Climate Change Funds* for the Cape Town meeting. Following an introduction – dedicated to a brief account of the Secretariat's view of GEF's role as an operating entity of the financial mechanisms of the Convention and the Kyoto Protocol – the paper contains an update on COP/MOP guidance concerning the Adaptation Fund, and a final section on the GEF's governance of climate change funds (including the World Bank legal opinion).

The GCCF paper's continuation of the introductory language describing the rationale for the paper – quoted in the introductory paragraph to this section – asserts that the envisaged new voting mechanisms are 'to be used in respect of any *voluntary fund* operated under the governance structure of the GEF'^{ii, iii} This clearly is a misconception of the actual nature of the AF: while it is allowed to accept voluntary contributions from donor agencies, its primary means of income is neither voluntary, nor a donor contribution, but the proceeds of a 2 percent share in the products of the Clean Development (market!) Mechanism.^{iv}

The reason why this is again non-trivial is contained in the World Bank Opinion's stating that 'it is important to note that these voluntary funds are (or are expected to be, in case of the Adaptation Fund) established ... by virtue of multi-donor trust fund administration agreements (TF AA) *entered into between the [World Bank] as trustee of the respective fund and parties contributing to such funds.*'¹¹

While reflecting – if not justifying – the special status of donor parties in the governance of such voluntary funds (mirrored in the GEF's 'double weighted' voting procedure), this equally highlights why that very model is inappropriate for the AF. As a matter of fact, it raises another question which will have to be addressed, namely: if the AF is to be established through such *trust fund administration agreement(s)*, who is to sign in lieu of the donors? But more of that later.

ⁱ GEF/C.29/5 (GCCF paper): §11.

ⁱⁱ Emphasis added.

ⁱⁱⁱ GEF/C.29/5 (GCCF paper): §11.

^{iv} It is therefore curious why the donors at the Copenhagen meeting should have asked the GEF to look into the feasibility of modified voting rules for *voluntary* funds!

3. The Way Ahead: Implementing the Nairobi Adaptation Fund Decision

Article 4 of the Nairobi Adaptation Fund Decision requests the UNFCCC SBI to develop recommendations on four outstanding issues, namely: (a) eligibility criteria; (b) priority areas; (c) monetising the share of proceeds; (d) institutional arrangements; with the aim of adopting a decision at COP/MOP.3 in December 2007. All of these issues are of importance, but – given the subsequent (Art. 5) invitation to interested institutions to ‘submit to the secretariat, by 23 February 2007, their views on how they would operationalize this decision’ – the most urgent one remains that of the potential arrangements for an operating entity or operating entities of the Adaptation Fund (AF).

3.1 Addressing the Democratic Deficit: How to give an effective voice to all Parties?

The danger of weak constituents – whoever they may be – feeling left out is a general problem for representative consensus-based decision-making, and not at all GEF specific.ⁱ A number of representative (‘direct’) democracies around the globe have recognised and resolved this problem by establishing the right for (groups of) constituents to directly introduce initiatives/motions into the representative decision-making body in question, and to force referenda on decisions taken by it.

It thus stands to reason that the political decision-making concerning the existing GEF operated funds could benefit by giving (groups ofⁱⁱ) members of the GEF Assembly the same rights, i.e. to submit motions to the GEF Council(s) and to force a vote on decisions, indeed, to force a secret ballot. Yet whether the GEF might be willing to accommodate such a change of procedure for the Special Climate Change Fund and the Least Developed Country Fund (and possibly even for its Trust Fund) is immaterial in the present context. What is of importance, in my opinion, is that these direct democracy rights be included in the governance system of the Adaptation Fund as proven safeguard for the voice of small and vulnerable Parties, regardless of whoever may end up operating it. The way to achieve this would probably have to be through exercising the COP/MOP’s strategic authority over the AF, for it is by no means guaranteed by the provisions of the Nairobi Decision.ⁱⁱⁱ

3.2 Addressing the Substantive Shortcoming: How to integrate COP/MOP concerns into the decision-making of the AF Executive Body?

In his opening statement to the SBI Plenary in Nairobi, the spokesman for the Norwegian delegation astutely recognised the need for ‘democratic governance’ of the AF. At the same time he stated that, for rational decision-making, the AF must be at an ‘arms-length distance from the climate change process’ and that, consequently, ‘we can only see one institution on the horizon that has the experience and set-up to make the Adaptation Fund operational in the shortest possible time, and that’s the GEF.’¹² This, of course, was

ⁱ Indeed, the GEF already has a tool suited to overcome this problem, namely a voting procedure. It simply lacks the modalities for its adequate application.

ⁱⁱ To avoid a ‘democratic overload’ of the system, it may be advisable to restrict these rights by, say, requiring a certain minimum number of countries to be involved.

ⁱⁱⁱ Indeed, in the case of the GEF, there is no guarantee whatsoever that the situation would change even if *ceteris paribus* the voting procedure were changed to the required ‘one-country-one-vote’ system.

diametrically opposed to the view of those who felt that the GEF in its present set-up should not be given the mandate to be an operating entity for the AF precisely because they saw it as being too remote from the climate change constituency of the COP/MOP.

In a (largely) consensus-based decision-making context, the only way of securing a voice for one's interests is to secure them 'a seat at the table'. This was, of course, exactly the reason for the demand of an AOSIS and an LDC representative on the AF Executive Body in the proposal put forward by the ecbi Oxford Fellows (re-iterated, as mentioned already, in the SBI.25 opening statement by Bangladesh on behalf of the LDCs). Given the likelihood that most of the decisions in the AF Executive Body will be consensus-based – even if subject to a 'referendum' procedure – the most effective, and possibly only way in which COP/MOP interests can properly flow into the executive decisions of the AF is by delegating a number of (interest group) representatives from the COP/MOP to sit at the table when the decisions are taken. A COP/MOP *Adaptation Fund Committee* (AFC) – in line with the 'management committee' envisaged in the G77 and China questionnaireⁱ – thus seems to be unavoidable in trying to remedy the (perception of a) substantive shortcoming in the political decision-making procedures of the GEF (and, potentially, any other candidate host institution).

Indeed, there could be another reason why such a committee may be needed. As mentioned earlier, the present UNFCCC voluntary funds are established through tripartite trust fund administration agreements between the host institution (the GEF), the trustee (the World Bank) and the contributing donor agencies, representing the national treasuries as the source of the contributions. While the AF will be able to accept this sort of bilateral donations, the source of its core income will be quite different in nature, namely proceeds of a 2 percent levy on the Kyoto Protocol Clean Development Mechanism (except on projects carried out in LDCsⁱⁱ).

If the AF were to be established by a similar arrangement, then it stands to reason that the third group of parties to the administration agreement(s) – representing the source of the money – would need to be (or, at least, to include) some entity or group of entities other than donor agencies to represent the source of the core income of the AF. There has been a lively, indeed at times acrimonious debate in the AF negotiations on who exactly is that source in the case of CDM adaptation levy. Although the debate is still in progress, the most cogent conclusion seems to be that the source is all the countries (potentially) involved in the CDM.ⁱⁱⁱ Given the possibility, indeed the necessity, to raise further private sector income – through schemes such as the recently proposed International Air Travel

ⁱ See Sections 2 and 4.

ⁱⁱ See Art. 15.b, 17/CP.7.

ⁱⁱⁱ More precisely, the debate was framed in terms of ownership of CERs. Some have argued that once the levy is taken, the CERs in question become international property. Others have argued that as such they belong to the CDM Executive Board. Yet others have taken the view that what really matters as source of the levy is ownership prior to when the levy is taken, and that as such it is the developing countries hosting the projects who are the owners and thus the source. Given that CERs are, in fact, privately owned, and usually by the project investor, another view is that the CDM levy originates in those countries that provide the investment for the CDM projects. In any case, in light of the possibility of unilateral CDM, probably the most realistic conclusion from all these arguments would have to be that the CDM adaptation levy has its source in all the – non-LDC (see Art. 15.b, 17/CP.7) – countries that participate in the CDM.

Adaptation Levy (IATAL)ⁱ that will potentially dwarf the CDM levy – the question of which Kyoto Protocol Parties should specifically be regarded as the source of AF income would become moot. In short, the only feasible resolution of this issue is to consider the COP/MOP as a whole as the source for that sort of international private sector income, and to have a COP/MOP committee represent that income source in any arrangement – such as the said trust fund administration agreements – that requires such a representation.

To conclude, there are good reasons why the management of the AF requires a COP/MOP Adaptation Fund Committee (AFC), not only in the obvious case of a ‘stand-alone’ modelⁱⁱ (see Figure 1), but also in the case of an existing institution hosting an operational entity of the Fund. In light of the general preference to reach decisions by consensus, such an AFC would be able to represent the COP/MOP in general, and certain important COP/MOP interest groups in particular,ⁱⁱⁱ in the decision-making process of the AF Executive Body. Moreover it would be able to represent the COP/MOP as the source of the core income of the Fund wherever this may be required. Both these functions are essential to running the Fund’s executive in a manner reflecting the spirit if not the letter of the Nairobi AF decision.

3.3 Implementing the Nairobi Decision: How to live under COP/MOP authority on a one-country-one-vote basis?

In his SBI.25 opening statement, the representative of Norway not only insisted on an arms-length involvement of the climate change regime in AF decision-making,^{iv} but he also forcefully argued against an oversight of the AF by a political body such as the COP/MOP. At first sight, this may seem somewhat curious: after all, any possible host institution for the AF– including the GEF (see Table 2) – will have an executive organ that is under the authority of a political body. In light of the pro GEF position, it thus stands to reason that Norway’s intention was probably not so much to argue against political oversight in general, but only against oversight by the COP/MOP. Could this possibly reflect a potential problem in the GEF governance with its Council working under the authority of a body (other than its own governing body, the GEF Assembly)?

Table 2: Executive and Governing Bodies of interested potential Host Institutions

<i>Institution</i> (in alphabetical order) <i>managed by...</i>	<i>Executive Body</i> <i>under the authority of...</i>	<i>Governing Body</i>
Global Environment Facility (GEF)	GEF Council	GEF General Assembly
Multilateral Fund for the Implementation of the Montreal Protocol (MLF)	MLF Executive Committee	Montreal Protocol COP
United Nations Development Programme (UNDP)	UNDP Executive Board	UN Economic and Social Council

ⁱ More information is available at www.OxfordClimatePolicy.org, and www.OxfordEnergy.org.

ⁱⁱ Sometimes also referred to as the ‘Montreal Protocol model’, but not to be confused with the scenario of the Montreal Protocol MLF serving as host institution!

ⁱⁱⁱ This, of course, does to some degree depend on whether the said interest groups are actually represented on the AFC.

^{iv} See Section 3.2.

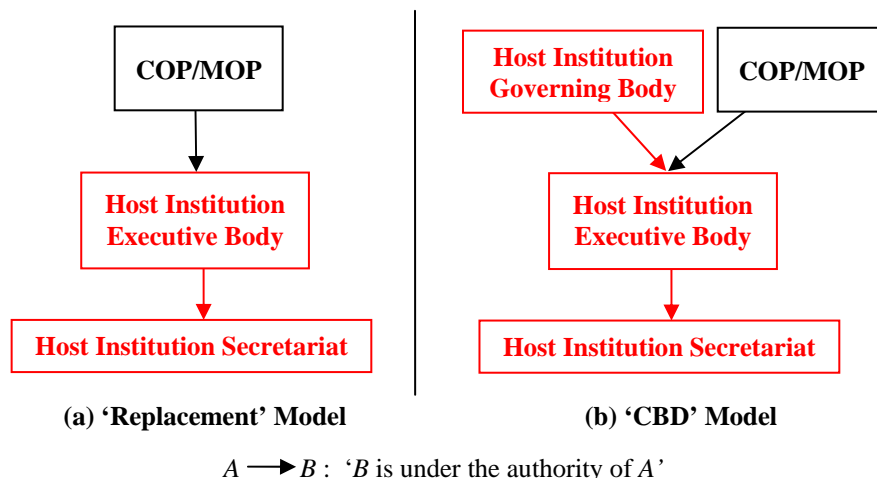


Figure 3.: Adaptation Fund Governance: Unlikely Options

As so often, the answer is 'yes and no.' Clearly, it would not be possible for the GEF to accept the COP/MOP as replacement for the GEF Assembly. And it is equally unlikely that such a replacement model (Figure 3) would be acceptable for any other potential Host Institution. However, as concerns the GEF Council's ability to work under the authority of a body other than the GEF Assembly, there seems to be a precedent:ⁱ According to Art 21 of the Convention on Biodiversity (CBD), the CBD financial mechanism 'shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention'. Moreover, the CBD COP 'shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources'.

Given this, and the World Bank Legal Opinionⁱⁱ that it is possible for GEF operated funds to use voting mechanisms differing from the one applied to the GEF Trust Fund,¹³ it would seem to be possible for the GEF to implement the key governance Articles of the Nairobi AF Decision concerning the authority of the COP/MOPⁱⁱⁱ and the one-country-one-vote-rule,^{iv} within its current governance structure. But it is questionable whether this 'CBD-Model' (Fig. 3.b) would find sufficient acceptance in the COP/MOP, particularly as it would not address the two key problems of current GEF governance identified earlier.^v

Indeed, it is not easy to determine whether the stipulation of the CBD that its financial mechanism be under its authority – and not just guided by it – has had any effect on the way the GEF has been operating. As a matter of fact, the most recent Third Overall

ⁱ I would like to thank Erik Bjornbye for having pointed this out to me.

ⁱⁱ As quoted in GEF/C.29/5.

ⁱⁱⁱ Art. 1 (e) The AF 'should operate under the authority and guidance of and be accountable to the [COP/MOP] which shall decide on its overall policies;'

^{iv} Art. 3 'membership of the governing body of the Adaptation Fund shall be from Parties to the Kyoto Protocol, follow a one-country-one-vote rule and have a majority of Parties not included in Annex I to the Convention;'

^v Section 2.2.

Performance Study (OP3) of the GEF fails to acknowledge any such additional authority. Instead it lists as the first operational principle of the GEF that ‘for purposes of the financial mechanisms for the implementation of the CBD and the UNFCCC, the GEF will function under the guidance of, and be accountable to, the Conference of the Parties (COPs).’¹⁴ Moreover, the OP3 description of the governance and reporting structure of the GEF makes explicit the fact that the sole role of COPs is to issue guidance and not decisions to the GEF Council.¹

Even though such an arrangement – with a one-country-one-vote provision – might satisfy the letter of the Nairobi Decision, it is doubtful whether it would be seen as consistent with its spirit. The stipulation concerning the COP/MOP’s authority over the AF was not just redundant word play, and would have to be more seriously reflected in the Fund’s governance structure than is the case in the GEF’s CBD implementation. One way in which this might be approached is in elaborating the voting procedure. At the moment, the only stipulation is that the procedure should give each (Kyoto) Party in the constituency one vote, but it does not specify who that constituency should be. In the case of the CBD-model (Fig. 3.b), there are only two candidates: the Kyoto Party members of the host institution’s governing body (e.g. the GEF Assembly), and the COP/MOP. And it stands to reason that in light of Art. 3 of the Nairobi Decision, voting on AF matters should take place in the ‘locus of authority’, i.e. the COP/MOP. Of course, this would still not solve the two key governance problems identified earlier, but it would be a step in the right direction.

The architectural elements for governing an entity such as the AF are well-established: apart from a trustee and implementing agencies, there is a core given (as illustrated in Fig 1.a) by a secretariat under the authority of an executive body – the ‘AF Executive Council’ (AFEC) – itself under the authority of a governing body, which in the case of the AF, given the Nairobi decision on the locus of authority (Article 1.e), would clearly have to be the COP/MOP.

The ‘democratic deficit’ can easily be resolved by augmenting the (‘one-country-one-vote’) voting mechanism with the direct democracy procedures of *initiatives* and *referenda* for (groups of) members of the constituency. That is to say, as AF constituency, the COP/MOP Parties – through the relevant UNFCCC focal points – should not only have the right to vote on AF issues, but they should also be given the democratic right (possibly subject to certain numerical restrictions) to table motions for the AFEC and to force a ballot *whether or not they are members of the AFEC*.

These democratic safeguards – particularly the designation of the COP/MOP (UNFCCC focal points) as AF constituency – should also provide some help in overcoming the second of the afore-mentioned problems, the ‘substantive shortcoming’. However, probably the best way forward in that respect would be for the COP/MOP to elect an Adaptation Fund Committee (AFC) to represent its interest directly in the decision-making of the AF, if only to make referenda and initiatives measures of last resort.

¹ Interestingly, no one is actually entitled to issue decisions to the GEF Council, according to this OP3 account, not even the GEF Assembly, who merely provides it with ‘recommendations’. So, to return to the initial question of the section concerning the Norwegian intervention, the problem for the GEF council may not be the authority of the COP/MOP, but the fact that it should operate under any authority at all.

There are essentially two ways of implementing these solutions in a governance structure (Figure 1), namely a ‘stand-alone model’ in which the AFC becomes the executive body of the AF (the ‘AF Executive Council’), and a ‘power-sharing model’, in which decision-making is shared with the executive body of a ‘host institution’ (such as the GEF, UNDP and so on).

In the power-sharing model (Figure 1.b), the AFC would be under the sole authority of the COP/MOP, while the host institution executive body could remain under the sole authority of its governing body. They would meet and take decisions jointly as the AF Executive Council, the executive body of the AF. As to the membership of the AFC, there are two options, namely

- (i) Kyoto Protocol Parties, chosen to represent certain COP/MOP constituencies, or
- (ii) individuals, chosen for their expertise, who as ‘COP/MOP officers’ would represent the COP/MOP as a whole, provided that they are given equal decision-making status as all other members (if any) of the AFEC.ⁱ

To facilitate the task of generating political acceptability (‘buy-in’, ‘ownership’) of AF decisions in COP/MOP circles, the members of the AFC should be designated focal points for groups of COP/MOP Parties (be it on geographical and/or interest-based criteria) with which they liaise and carry out ballots (both through the relevant UNFCCC focal points). In other words, each Kyoto Party UNFCCC focal point should be kept informed, and – if required – polled by a designated AFC member (the relevant ‘AFC focal point’).

A committee like the suggested AFC may indeed be needed for (formal) reasons other than generating political acceptability, namely to represent the owners of the AF money – regardless of who they areⁱⁱ – to take up the function of donor agencies in multilateral donor funds, for example in signing the AF trust fund administration agreement(s).

The power-sharing model – even though slightly more complex – may well be superior to the stand-alone one, since it stands to reason that in order to function effectively, the AF would not be served adequately if its executive body was only representing climate change concerns. The addition of financial and/or developmental expertise is bound to make the power-sharing model superior to the stand-alone one, as long as the sharing of power is genuine, and all sides feel adequately involved in the process.

ⁱ Note, in particular, that while the procedural rules for the GEF Council in Art 11 permit the possibility of inviting UNFCCC representatives to attend regular Council meetings, they clearly do not have Council member status.

ⁱⁱ The ownership of the CERs levied for the AF has been a very contentious issue, essentially about the relation of private property (CERs) to some form of derivative ‘sovereign ownership’. While this cannot be discussed here, the fairest and most practicable solution in the longer term seems to me on reflection to assign ownership to the COP/MOP as a whole, to include even Parties (such as the LDCs) whose projects are exempt from the levy.

Endnotes

Appendix A: Excerpts from Relevant UNFCCC Documents

Appendix B: Documents relating to interested Host Institutions

Appendix C: Selected COP12/MOP2 High-level Statements

Appendix D: Selected SBI.25 Plenary Statements

Appendix E: The Concept of Adaptation as used by the IPCC.

Appendix F: Misc. Documents [Letters of appreciation/Critique of Secretariat Note on AF]¹

¹ Appendix A: [A.0]

² Appendix A: [A.1], [A.2], and [A.3].

³ Appendix D: [D.14]

⁴ Appendix D: [D.20]

⁵ Appendix D: [D.23]

⁶ Appendix G.

⁷ Appendix A:6.

⁸ Appendix F:4.

⁹ Appendix F ### [A:5.1]

¹⁰ Appendix F:2.1.

¹¹ Appendix F:2.3.

¹² Appendix D:6.

¹³ Appendix F:2.3.

¹⁴ Appendix F:5.1.