The Design Process for the Green Climate Fund: Lots of Disagreement, Little Time

A Summary Report of the Third Meeting of the Transitional Committee in Geneva

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At the climate summit last December in Cancun, parties to the UN Framework Convention on Climate Change (UNFCCC) decided to set up a Transitional Committee (TC) in charge of designing the new Green Climate Fund (GCF). The TC is tasked to propose its design recommendations to the next meeting of the Conference of Parties (COP) in Cancun in late November for approval.

With three out of four scheduled meetings of the TC now completed after the recent one in Geneva (from September 11th to 13th), severe differences remain primarily, although not exclusively, between the 25 developing countries and the 15 developed countries represented in the TC regarding the form and functions of the Fund. This is despite the fact that some progress and convergence of opinions on important matters are emerging, such as that funding decisions should be driven by, and consistent with, developing countries' own national climate and development plans. However, the points of divergence and disagreement are too many and too fundamental in nature to simply hope for a rapid alignment or quick compromise between the TC members. Given that there are just two full days of negotiations in the 4th TC Meeting in Cape Town on October 16th and 17th and a mere four weeks of behind-the-scenes hackling and drafting left to bridge that divide, it is hard to agree with the optimistic assessment of UNFCCC Executive Secretary Christiana Figueres that the TC "is now fully on track to conclude the design of the Fund for the approval by the UNFCCC's Conference of the Parties in Durban" in late November. The road to Durban remains bumpy, and TC members have little time to cover a lot of distance.

These contentious issues include the legal status of the Fund, its relationship with the COP and other governance arrangements, the engagement of the private sector, key operational modalities (such as the number of windows and financing instruments to be used) as well as overriding objectives and guiding principles to ensure that the GCF is a new kind of climate finance animal – a new creation that fills the gaps in the existing climate finance architecture and surpasses the existing instruments in ambition, scope, scale and transformational impact. They do in fact juxtapose two extremely different visions and business models for the GCF: One vision foresees a bigger Fund controlled and overseen tightly by the COP which channels largely public budgetary contributions predominantly in the form of grants to developing countries according to their needs and allows them direct access to and ownership over how to spend, implement and account for these sums (the developing country preference); the other vision focuses on using limited public financial input into a smaller Fund which functions largely independent of the COP with the primary objective to facilitate the entry of private sector investments for developing countries in order to generate the bulk of the US$100 billion in long-term climate finance annually. This Fund also establishes tight accountability, efficiency, results-orientation and fiduciary standards for direct access of GCF financing of recipient countries (the developed country preference).

The road ahead

For sure, the TC will be able to present something to COP 17, even if – as a last-ditch effort – members will have to use the first few days of the Durban conference for a 5th TC Meeting (technically still within their Cancun mandate to have COP approval by the end of COP17 for the proposed Fund design). Unfortunately, that push by the TC to successfully complete its mandate could come at the cost of leaving most of the tough questions to be sorted out by the future GCF Board – the as-of-yet unknown 24 men and (hopefully at least some) women, 12 from developing and 12 from developed countries, who will effectively operationalize the new Fund. Theoretically, such a Board could become functional and start its work as of January 1, 2012. In reality it will take significantly longer, if the four months it took UNFCCC parties to agree on the members of the TC from its regional constituencies are any guidepost.

TC members, if unable to agree on a range of detailed recommendations, could end up sending to the COP little more than an expanded outline consisting largely of the various headings and bullet discussion points—bullets pertaining but not limited to Fund objectives and guiding principles, Fund governance, operational modalities as well as monitoring, evaluation and stakeholder engagement. These points will be elaborated upon to a greater extent by the future GCF Board. What such a rough framework document with a minimum of agreed language (and some proposed options) could look like, shows in the document what the three Co-Chairs (from Mexico, South Africa and Norway), two Vice-Chairs (from Singapore and Australia) and Co-facilitators of the previous thematic working groups of the TC (from Barbados, Spain, Pakistan, Sweden, Australia, Switzerland and the Democratic Republic of Congo) presented on the last day of the Geneva meeting.

They form the group of 12 facilitators that formulated the introductory "draft reflections", which according to Co-Chair Trevor Manuel from South Africa, are presented to TC members "not for adoption but for enrichment." TC members have only until October 5th to further elaborate on or change and amend this draft, having to rely solely on telephone and email exchanges. Several developing country members, including the Philippines, are therefore worried about the transparency and inclusiveness of such a process. An updated version of this document incorporating TC members' comments will then be circulated to all TC members as the draft report of the TC to the COP 17 on October 7th. It will form the basis of negotiations at the 4th TC Meeting in Cape Town on October 16th and 17th. Ideally, the TC members will agree on the draft report and adopt it, effectively sending it to the COP 17 for approval in Durban a few weeks later.

Key areas of discussion in Geneva

However, while the procedural roadmap for the TC is clear, how to get there in substance still remains a big question and – at the moment – a seemingly insurmountable challenge. TC members had intense discussions – and severe disagreements – on several key issues, five of which were proposed by Norwegian Co-Chair Kjetil Lund for special focus in Geneva as central questions with the potential to "unlock" other open questions. Discussing these took up almost two of the total three days of meeting time. These key issues, with significant linkage to others, open questions about the Fund's relationship with the COP; the establishment of an independent secretariat; the use of funding windows and earmarking; the engagement of the private sector; and the Fund's pending legal status.

1. The Fund's relationship with the UNFCCC COP

While the Cancun Agreements specify that the Green Climate Fund is under the guidance of and accountable to COP, there is no clear understanding what this means with respect to the role of the COP in selecting Board members, in determining the permanent trustee of the GCF or the head of the Fund's independent Secretariat, and in evaluating/ monitoring the Fund's progress and accomplishments. Developing countries such as Brazil, the Philippines, Pakistan, India, China or Egypt argued largely for a very direct relationship, with the COP approving Board members, giving the direction for the Fund's programs and strategies and evaluation its effectiveness in a continuous manner.

The United States, representing the other end of the spectrum, argued that this would bring the Fund under the authority of the COP in violation of the Cancun mandate. In their view, supervision of the GCF through the COP should only come as part of the COP's periodic supervision of the financial mechanisms of the UNFCCC. Instead, sole decision-making power for the Fund would rest with the Board as executive authority. Other developed countries such as Germany, Australia, Japan, Italy, Spain or United Kingdom suggested the GCF-COP relationship follow the example of the Global Environment Facility (GEF) by making specialized arrangements with the COP via a "Memorandum of Understanding" and by regular (possibly yearly) reporting to the COP. They suggested this as the best model to ensure efficiency and avoid UNFCCC micro-management of the Fund while ensuring its responsiveness to the guidance of the COP. On these points, Norwegian Co-Chair Lund suggested some convergence among all TC members.

2. The establishment of an independent Fund Secretariat

The Terms of Reference for the design of GCF had stipulated the establishment of an independent GCF Secretariat. In the Geneva discussion, a number of developing countries (Egypt, Nicaragua, Brazil, Barbados, India, Pakistan, China, and Burkina Faso) felt the need to clarify that they understood the GCF Secretariat's independence to mean independence from existing institutions and structures (for contrast, secretariat services for the Adaptation Fund are currently still provided by the GEF), but not from the Fund's Board or the COP. Several developing countries indicated that the Fund's Secretariat should be relatively small (Egypt, Philippines, Singapore) as most implementation and oversight would occur in the recipient countries. Members suggested the Secretariat should be staffed with experts from a variety of backgrounds and be geographically as well as gender-balanced (Nicaragua, Barbados, Korea), while avoiding a potential conflict of interest by drawing staff from Multilateral Development Banks (MDBs).

TC members agreed widely that the position as head of the Secretariat should be merit-based and selected internationally according to a set of criteriaThey disagreed, however, on who (the Board or the COP) should draw up these criteria and make the selection. Several speakers (Russia, France and Burkina Faso) stressed the correlation between the Board's working model (meeting infrequently or sitting in residence) and the function of the Secretariat and its head in the day-to-day management of the Fund. South African Co-Chair Trevor Manuel pleaded to allow the Secretariat the room to grow to manage financial amounts in the future that could effectively reach twice the amount of the World Bank's funding portfolio (in comparison: the World Bank staff currently numbering several thousand people).

3. Funding windows, financial instruments and earmarking

Over the course of the last few months, TC members had submitted a variety of views on how many funding windows and what menu of financial instruments would be needed. Most members seemed to agree that initially there should be only a small number of windows, primarily for mitigation and adaption with a balanced funding allocation. In addition, the GCF Board should have the capacity to create, augment or delete windows and delegate some decision-making power sub-committees. Several other windows were proposed, most commonly for REDD+ (supported by Belize, Spain, Germany, United Kingdom, USA, Peru) and for LDCs and SIDS (DR of Congo, Samoa, Belize). Other speakers suggested windows or a special financing facility for capacity building (Korea, Brazil), technology transfer (Saudi Arabia, Brazil) or transformational change (Spain, Germany, Peru and Italy) respectively, although the majority of TC members saw the need to integrate capacity-building and technology transfer as cross-cutting issues into all eventual funding windows.

Members disagreed on the utility or desirability of earmarking of contributions for strengthening the allocation system of the Fund. While some countries rejected earmarking as contrary to the concept of country-ownership, the principle of providing equal access for all developing countries through the Fund (Brazil, Philippines, Zambia, Peru and Saudi Arabia) and felt it threatened the authority of the GCF Board (Pakistan), others saw it as a necessity to ensure that enough funding will be flowing to disadvantaged country and population groups (Belize) as long as some specific criteria and conditions would be observed (Egypt and Korea). Several developed countries suggested that while not desirable, earmarking might be unavoidable, especially if it can help to increase the volume of funding for the GCF (Spain, United Kingdom, United States).

4. The engagement of the private sector

A strong focus of the TC discussions from their very beginning centers on GCF engagement with the private sector. More specifically, is centers on how it may do so more effectively than existing public climate finance instruments. Since the last meeting in Tokyo in July where private sector representatives were largely absent, several regional direct consultations with the business sector had been conducted and private sector submissions to the TC solicited. In Geneva, a workshop right before the meeting allowed private sector and civil society representatives to air their often competing views. Private sector speakers favored the establishment of a private sector funding window to address their need for risk reduction as well as funding certainty for investment in low-carbon growth in developing countries. They also urged that private sector observers be allowed on the GCF Board. Members of civil society, on the other hand, stressed the need to tie private sector involvement in Fund allocations to countries funding needs as expressed in participatory and country-owned national plans and communications and warned against a separate window for the private sector.

TC members picked up this discussion about the desirability of a private sector window in the following TC meeting, with several countries such as Japan, the United Kingdom and the United States in favor, but the majority of members skeptical whether a separate window would be the right approach. Countries such as Egypt and Nicaragua rejected its as outside the Fund's mandate of enhancing the implementation of the Convention; several other countries (including Peru, Zambia, Burkina Faso and Nicaragua) felt the inclusion of the domestic private sector should be realized in the country-context of Fund recipients only, for example in the framework of public-private partnerships. Russia, Germany, France, Sweden, Singapore, Australia, the Netherlands and Denmark, while not supportive of a private sector window, called for a special set of engagement rules, financial blending instruments or a financing facility for the private sector in the Fund – a distinction between window and facility that will come down more to form than to function. Russia suggested a "Private Sector Partnership Facility", which according to France could be modeled after the World Bank's existing Forest Carbon Partnership Facility with a readiness phase to prepare a "welcoming" regulatory framework in recipient countries followed by an implementation phase.

5. The Fund's legal status

That idea the GCF needs some sort of legal status seems to be in itself not in dispute. Most members have been convinced by the experience of the GCF, which depends on its trustee, the World Bank, for support in matters requiring legal capacity, that the GCF must be independent of existing institutions for jurisdictional issues, such as its capacity to enter into contractual agreements with recipient countries, a necessity for example for implementing a direct access modality. At question, however, in the TC discussions is what kind of legal status the Fund needs to fulfill its functions (does it need status as full legal entity or is its current legal capacity sufficient?); how it should be pursued or conferred (through an international treaty or via a host country government); if an interim solution might be needed in order to avoid delaying the operationalization of the Fund (the intent is for the Board to start its work in early 2012); and at what stage in the TC deliberations a decision on both an interim and a final solution should be made.

Several developed countries (most vocally the United States, the United Kingdom, Germany, Spain and France) have consistently argued throughout the TC deliberations that "form follows function," there in which the legal status of the GCF should depend on its key operational attributes. These countries also pointed to legal complexities as a reason to delay a decision on the Fund's legal status further to the fourth TC meeting in Cape Town. In contrast, Russia, Brazil, Egypt, the DR Congo and the Philippines see the problem as mainly a political, not a legal one. They pointed to the example of the Montreal Protocol Fund suggesting that similarly the COP through a decision might be able to confer legal personality to the Fund.

According to several TC members, being serious about ambitious objectives for the Fund means for members of the TC to eventually support full independent legal status for the Fund, even if an interim solution might be needed (China, Brazil, Sweden, Pakistan, South Africa, Russia, DRC, Switzerland), given that the ability of the Fund to enter into contracts and agreements, to raise and receive money, to employ staff and to hold property is determined by its legal status. Singapore, Pakistan, Gabon and South Africa in their intervention stressed in particular the link between private sector involvement in the GCF activities and the need for a legal personality for the Fund in order for the Fund to employ for example market-based financing mechanisms and to interact with financial and carbon markets.

Other contentious issues

Co-chairs took pains to acknowledge many members' concerns (including Saudi Arabia, Nicaragua and Philippines, but also the United States or India) that a focus of the Geneva discussions on these five key points would neither imply agreement on other issues not taken up in the meeting nor detract from their importance. Additional issues were brought up as further points of contention. Among them was the objection of several developing country members (China, Nicaragua, Brazil, Zambia) against the use of "transformational" in describing the Fund's objectives as too undefined and not in line with the Cancun Agreements language. This followed a push by Germany and other developed countries to see if it was possible to reach agreement on the meaning of the term, including by holding a workshop session in Geneva just before the third TC meeting.

Giving voice to a long-held position by the G77 and China, Brazil had also objected against including a reference to the application of environmental and social safeguards into a list of possible Fund principles as outlined in the "draft reflections". Many developing countries fear safeguards could be used as conditionalities that limit and complicate the access of developing countries to the Fund. Most contributor countries, but also many civil society observers (including from recipient countries) on the other hand argue that the GCF needs to apply a set of ambitious and strict environmental, social and gender safeguards in order to realize non-climate co-benefit of climate financing through the Fund. A possible compromise might be to designate the application of such safeguards and the realization of non-climate co-benefits as states' obligation in national contexts to be fulfilled through countries' designated national implementing agencies for the GCF. This however might not be strong enough for some TC members to accept.

Countries could also not agree on the notion of granting non-voting member status on the GCF Board to stakeholder representatives, something that civil society groups and the private sector are strongly pushing for, but which is not specified in the terms of reference for the GCF spelled out in the Cancun Agreements. The United States, Germany and others had supported the inclusion of two representatives each from the private sector and civil society on the Board, less than what civil society groups had hoped for (they had wanted to include a representatives from a developed country, a developing country and an affected community each together with one private sector seat). However the "draft reflections," as basis for the draft outcome document for Durban, currently include seats for only the private sector. Some developing countries (Nicaragua) see no room for non-voting observers outside of the Cancun mandate, while others (Zambia, Brazil) demand an equal treatment of private sector and civil society representatives in governance and participation structures of the future Fund going forward.

Unfortunately, the list of contentious issue still awaiting agreement could be expanded further... What to include in the list of principles and objectives for the Fund, an elaboration on the Fund's "business model" to be used and its allocation criteria, what assessment and fiduciary standards to apply and if (as well as how) to account for the special situation of SIDS and LDCs all remain issues fraught with the potential for further disagreement among TC members. Whether all of these can be resolved in the short time left for the TC process remains doubtful. The facilitator group of 12 country members will no doubt attempt to put "members in a pressure cooker" in order to have a draft outcome for Durban, as Co-Chair Trevor Manuel from South Africa only half-jokingly threatened. Lack of transparency and the "railroading" of particularly weaker developing countries into going along with something that might not be in their best interest is a real concern going forward.

As in the existing climate finance architecture, the poorest and most vulnerable countries, such as those in Africa, the LDCs and the SIDS, could again be the real victims in the TC negotiations, where their financing needs continue to be treated as a lesser priority. They cannot afford to stick to the principled argumentation lines that the emerging market countries such as India, Brazil or China are toeing in the TC (which are not as financially dependent on a functioning Green Climate Fund as the LDCs and SIDS). Their strongest argument, a moral one of responsibility and existing legal obligations under the UN Framework Convention, is powerless in the face of industrialized countries' indifference and mounting budgetary pressure. They also lack the political clout of the larger developing countries, whose cooperation the developed world needs to be effective in global mitigation efforts.

Desperately needed: a positive signal

What could be helpful at this point in breaking the deadlock and avoiding the last-minute political arm-twisting in the TC process that would undermine wide-spread ownership of and support for the post-Durban Fund would be a positive signal. This should come latest in Cape Town in the form of a concrete financing promise of the developed countries to ensure that the Fund will not start out with empty coffers and that the new GCF Board has the financial security to convene in early 2012 in order to work out detailed operational guidelines for the Fund. Equally helpful would be a concrete offer from at least one member country to host the Fund and pursue legal status on the Fund's behalf, ideally with some promised funding to support the seriousness of such an offer. So far, developed countries have not stepped up to the plate.

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