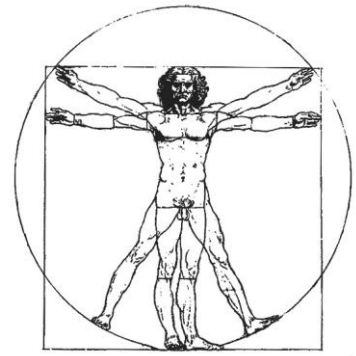


ecbi policy brief



What Functions? What Form?

Operationalizing the Standing Committee

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Introduction

The ‘Cancun Agreements’¹ – widely acknowledged as the life-savers of the international climate change regime after the Copenhagen shipwreck – contain a number of important decisions on climate finance. By far the most prominent one has proven to be the decision to establish a **Green Climate Fund** (GCF), *to be designated as an Operating Entity of the Financial Mechanism of the Convention under Article 11, with arrangements to be concluded between the Conference of the Parties and the Green Climate Fund to ensure that it is accountable to, and functions under, the guidance of the Conference of the Parties, to support projects, programmes, policies, and other activities in developing country Parties using thematic funding windows.*²

The COP at Cancun also decided *to establish a **Standing Committee** under the Conference of the Parties to assist the Conference of the Parties in exercising its functions with respect to the Financial Mechanism of the Convention, in terms of improving coherence and coordination in the delivery of climate change financing, rationalization of the Financial Mechanism, mobilization of financial resources and measurement, reporting, and verification of support provided to developing country Parties.*³

Notwithstanding the contrasting enthusiasm felt by some Parties towards these two decisions, together the two new institutions agreed to at Cancun have laid the foundation of new climate finance architecture, which also resolves some of the definitional and operational riddles concerning the Financial Mechanism of the Convention and its operating entities. There is now greater institutional clarity on what may or should constitute the Financial Mechanism of the Convention.

Paucity of time at Cancun, and complexity of negotiations, prevented a comparable degree of elaboration of the two decisions, though the COP did agree to formally establish the Standing Committee, with a caveat that *Parties agree to further define the roles and functions of this Standing Committee.*⁴

The aim of this ecbi Policy Brief is to outline some ideas of *what functions* the Standing Committee should have, and *what form* it should take. The brief is divided into two parts. Section 1 – roughly the first half of the brief – describes the *background* of the decision to establish such a body, and the *motivations* for doing so. The second half describes the proposed nature of the Standing Committee. Following the well-known adage in the design of governance architectures that ‘form follows function’, Section 2 lists the *functions* which the Standing Committee ought to perform, in light of the preceding analysis, which in turn provide (some of) the justifications as to *form*, described in Section 3.

¹ Decision 1/CP.16; FCCC/CP/2010/7/Add.1.

² para. 102

³ para.112

⁴ op. cit.

I. Background and Motivations

This Section provides some of the background on the decision to establish a Standing Committee, and some motivations – particularly for the Standing Committee functions listed in Section 2. The Section is divided into three parts.

The first part (1.1) simply provides some general background on the Financial Mechanism of the UN Framework Convention on Climate Change (Convention), as defined in Article 11 of the Convention.

The second part (1.2) discusses what we refer to as ‘Tier One’ issues, that is *problems with the existing system* – in particular, *problems with the current implementation* of the Financial Mechanism.

The third part (1.3) discusses some (‘Tier Two’) issues of initial implementations/operationalizations, either of the relevant decisions in the Cancun Agreement, or issues that may become pertinent depending on how the negotiations evolve.

I.1. The Financial Mechanism of the UNFCCC

Article 11 of the Convention defines, in paragraph 1, *a mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology*. The same paragraph stipulates that this Financial Mechanism is to *function under the guidance of and be accountable to the Conference of the Parties (COP), and its operation shall be entrusted to one or more existing international entities (‘Operating Entities’)*. The COP is charged with deciding the Financial Mechanism’s *policies, programme priorities, and eligibility criteria related to this Convention*.

Paragraph 3, in turn, requires the COP and Operating Entities to agree upon arrangements, including:

- (a) *modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities, and eligibility criteria established by the Conference of the Parties;*
- (b) *modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities, and eligibility criteria;*
- (c) *provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and*
- (d) *determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.*

The Interim Arrangements adopted in Article 21 of the Convention designated the **Global Environment Facility**⁵ (GEF) as (interim) **Operating Entity**, with the proviso that it *should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11*.⁶ In 1998, the COP took the decision to review the Financial Mechanism every four years. In Decision 3/CP.4, the COP not only specified the terms of reference for these reviews, but also decided, on the basis of a *study of the overall performance of the restructured Global Environment Facility* carried out by the GEF,⁷ that *the restructured Global Environment Facility shall be an entity entrusted with the operation of the Financial Mechanism*, thus ending the GEF's interim status as Operating Entity.

The fact that there is currently (still⁸) only one Operating Entity of the Financial Mechanism has led to some confusion about the status of the GEF in the Financial Mechanism. While there can be no doubt that the GEF is **an Operating Entity** of the Financial Mechanism, time and again it is referred to as being **the** Financial Mechanism. The GEF website, for example, currently states that the GEF *'serves as Financial Mechanism for'*⁹ the UNFCCC.¹⁰

Without reading too much into possible motives behind this confusion,¹¹ let us move on to another provision in Article 11, namely that the *Financial Mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance*.

This paragraph only makes sense if it is read as applying to a body (or bodies) involved in the governance of the Financial Mechanism. At present, there are three such bodies: the UNFCCC COP; the Subsidiary Body for Implementation (SBI); and the GEF Council (as executive organ of an Operating Entity). While it makes no sense to talk of 'equitable and balanced representation' in the context of the COP or its open-ended Subsidiary Bodies – as both include representation from *all* members of the UNFCCC – the paragraph does make sense with respect to executive bodies of operating entities, and to committees of the COP as (representative) subsidiary bodies. This will have to be kept in mind when discussing the form of the Standing Committee in Section 3 below.

⁵ At the time, the GEF was a project of three organizations: the World Bank, UNDP, and UNEP, which became the three original implementing entities of the UNFCCC Financial Mechanism.

⁶ In Decision 3/CP.4

⁷ Gareth Porter, Raymond Cléménçon, Waafas Oforu-Amaah, and Michael Philips, *Study of GEF's Overall Performance*, Global Environment Facility, March 1998.

⁸ The Green Climate Fund currently being planned, is to be designated as another Operating Entity of the Financial Mechanism.

⁹ www.thegef.org/gef/whatisgef, accessed 22 May 2011.

¹⁰ 'As part of the restructuring, the GEF was entrusted to become the Financial Mechanism for both the UN Convention on Biological Diversity and the UN Framework Convention on Climate Change.' (http://en.wikipedia.org/wiki/Global_Environment_Facility#GEF_History).

¹¹ The role of the GEF as an Operating Entity of the Financial Mechanism of (i) the Convention on Biological Diversity (CBD), and (ii) the Stockholm Convention of Persistent Organic Pollutants (where it is designated as 'the principal entity entrusted with the operation of the Financial Mechanism') is subject to the same confusion. Under the Convention to Combat Desertification (CCD) the GEF is actually designated as 'a Financial Mechanism' of the CCD, conforming to the usage of that term in CCD/Art. 4.2 (h): to 'promote the use of existing bilateral and multilateral Financial Mechanisms and arrangements'.

To date, the COP has been exercising an oversight function over the Financial Mechanism and its Operating Entities through its ***Subsidiary Body for Implementation*** (SBI), which was established under Article 10 of the Convention *to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention*. The initial scope of the SBI is given in the second paragraph of this founding Article, which tasks the SBI – under the guidance of the COP – to consider information on national emission inventories and steps taken towards implementation of the Convention, including material relevant for calculating global emissions trends (Art. 12.1.a) and information (from developed countries) regarding mitigation policies and measures (Art. 12.1.b), in order to assist the COP in reviewing developed country commitments.

While the scope of the SBI was not explicitly restricted to mitigation issues, other thematic areas may not always have been given the prominence that some Parties think they deserved. The decisions adopted at Cancun could rightly be read as being the collective will of the Parties to rectify this operational anomaly through the creation of additional (subsidiary) bodies to cover (most of¹²) these areas – namely an Adaptation Committee, a Technology Executive Committee, and the Standing Committee (on finance).

This raises an important question: if all these additional bodies are to report directly to the COP, what will be the division of responsibilities between them and the SBI? In particular, is the SBI going to continue to deal with finance matters? If so, which ones? Or, has the time come for the SBI to function simply as the ***subsidiary body for implementation of mitigation objectives***?

¹² The only major theme that was not given its own (subsidiary) body being capacity building.

I.2. Tier One: Fixing the existing system – Tying up loose ends

OVERSEEING OPERATING ENTITIES

At present, the UNFCCC Financial Mechanism has only one Operating Entity – the GEF. It is envisaged that at COP 17 in Durban, the Green Climate Fund will be operationalized as a second Operating Entity. As mentioned above, Article 11 of the Convention stipulates that the Financial Mechanism *shall function under the guidance of, and be accountable to, the Conference of the Parties*. This has been applied, *mutatis mutandis*, to both the existing and the prospective new Operating Entity (paragraph 102 of the Cancun Agreement).

The original decisions regarding the operationalization of COP oversight of Operating Entities are laid down in Article 11.3 of the Convention:

The Conference of the Parties and the entity or entities entrusted with the operation of the Financial Mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

- (a) *modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities, and eligibility criteria established by the Conference of the Parties;*
- (b) *modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities, and eligibility criteria;*
- (c) *provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above;*

The Memorandum of Understanding between the COP and the GEF Council

A Memorandum of Understanding (MOU) was agreed between the COP and the GEF Council in 1996,¹³ (Appendix III), *to give effect to the respective roles and responsibilities of the COP ... and the GEF ... and to provide for the required interaction between them under Article 11 of the Convention and paragraphs 26 and 27 of the [GEF] Instrument.*

Accordingly, the MOU addresses a number of areas pertinent to the issue of oversight over Operating Entities, namely:

- (i) ***determination and communication of guidance from the COP*** (paras. 2 and 3);
- (ii) ***conformity with COP guidance*** (para. 4);
- (iii) ***reconsideration of funding decisions*** (para. 5); and
- (iv) ***reports from the GEF to the COP*** (paras. 6, 7, and 8).

Having established that the COP will communicate guidance to the GEF Council after each of its annual sessions (para. 3), the MOU explicitly ***identifies the GEF Council as carrying the ultimate responsibility*** of *ensuring the effective operation of the GEF as a source of funding activities for the purposes of the Convention in conformity with the guidance of the*

¹³ Decision 12/CP.2, FCCC/CP/1996/15/Add.1, 29 October 1996.

COP and to report regularly to the COP on its activities ... and on the conformity of those activities with the guidance received from the COP (§4).

The section on ***Reports from the GEF to the COP*** elaborates on the content of the Annual Reports which the GEF Council is expected to prepare. In particular, it stipulates (para. 6) that, *in order to meet the requirement of its accountability to the COP*, the Annual Report must cover all activities carried out in implementing the Convention, and that it *should include specific information on how it has applied the guidance and decisions of the COP* (§7). In other words, the process for holding the GEF accountable as an Operating Entity of the Financial Mechanism – as defined in the MOU section on ***Conformity with COP guidance*** – is very simple: the GEF Council is meant to report on its own performance. While evidently very simple, the objectivity of such a self-reporting process is not self-evident. Reviews and evaluations commissioned by the Council can be useful tools for the ***internal management*** of the GEF by its Council, they cannot be a substitute for ***external reviews and evaluations*** of the GEF.¹⁴

As to the redress modality envisaged in Art. 11.3 (b) of the Convention (see above), the MOU encourages Parties which consider a particular project funding decision by the GEF Council as not being in compliance with COP guidance to present their reservations to the COP for analysis. If the COP upholds the complaint, then *it may ask the Council of the GEF for further clarification on the specific project decision, and in due time may ask for a reconsideration of that decision.* (para. 5)

It is doubtful whether an appeal to the full COP for analysis is really practicable. Where there can be little doubt, is that the ultimate sanction – the issuance of a request to reconsider a decision that has been found defective – falls short of what one would expect of a proper redress procedure. Moreover, the MOU procedure is limited to complaints about ***specific funding decisions***. It thus cannot be used to lodge complaints, for example, about operating rules/modalities and their compliance with COP guidance.

The MOU, in short, fails to establish either an ***external review and evaluation of the GEF*** as an Operating Entity of the Convention, or a ***practicable redress mechanism***. The only body that has the legitimacy to commission such external reviews and evaluations, particularly with regard to adherence to guidance, ***is the body that issues the guidance, namely the COP*** (possibly through one of its subsidiary bodies). The MOU was mutually agreed by the GEF Council and the COP. The current ambition should be, particularly on the side of the COP, to improve on what was agreed at the time, in the context of the current efforts to enhance the implementation of the Financial Mechanism.

¹⁴ As was rightly pointed out in a personal communication by a GEF Council member, ‘OPS-4 was indeed produced by the GEF Evaluation Office, which is independent from the Secretariat and sits under and responds to the GEF Council directly. All previous OPSs were outsourced to specialized companies.’ But the point here is not whether the GEF Evaluation Office, or for that matter the specialized companies in question, are independent of the GEF Secretariat, but that they were commissioned by the GEF Council, chaired by the GEF CEO, who incidentally also happens to head the GEF Secretariat.

The current oversight practice under the SBI

As mentioned earlier, COP oversight over Operating Entities is defined in terms of the provision of guidance by, and of being accountable to, the COP. The annual process of providing guidance is launched in an SBI Contact Group, which drafts guidance for SBI endorsement and subsequent COP adoption. The Contact Group is open-ended (open to all Parties), as is the SBI. The present process of providing guidance therefore involves a trinity of bodies, made up (in principle) of *exactly the same actors* – the 195 Parties to the Convention.

The SBI meets twice a year for a fortnight, to deal with an agenda that has been steadily expanding over the years. For example, the Agenda of the 32nd SBI session, in May/June 2010, contained 19 items and many more sub-items. In particular, Agenda Item 5, on the ***Financial Mechanism of the Convention***, included consideration of the GEF Annual Report, COP guidance to the GEF, the fourth review of the Financial Mechanism, and the assessment of the Special Climate Change Fund. This Agenda item grew by one sub-item at the 33rd session in Cancun, where consideration of the Least Developed Countries Fund was added.

The SBI completed its work on Agenda Item 5 on 3 December 2010 in Cancun, and a draft decision on guidance to the GEF was forwarded to the COP for consideration and adoption.¹⁵ The SBI Contact Group on Agenda Item 5 met formally three times for a total of three hours during 2010.¹⁶ Taking into account the additional informal meetings (closed to observers), the time allocated in 2010 to overseeing the GEF *was less than 9 hours*.¹⁷

To review the Financial Mechanism and give guidance to its Operating Entity in that amount of time would seem to be a Herculean task, possible only – as one lead negotiator pointed out in a personal communication – because COP guidance to the Operating Entity tends to be very repetitive.

Consider, for example, the issue of funding developing country National Communications addressed under Article 4.3 of the Convention, adopted in 1992.¹⁸ The Article stipulates that Parties listed under Annex II of the Convention are to *provide new and additional financial resources to meet the agreed full costs* incurred by developing country Parties in preparing their National Communications, through the Operating Entity(ies) of the Financial Mechanism.

As it happens (see Box 1.1), this issue has figured regularly in the guidance by the COP to the GEF, year in and year out. Yet the most recent review of the Financial Mechanism by the SBI simply takes note of the finding of the Fourth Overall Performance Study of the GEF that

¹⁵ FCCC/SBI/2010/L.39 and Add.1.

¹⁶ 2 June 10–11:30a.m., 8 June 10–11a.m., and 1 December 10–10:30a.m.

¹⁷ Contrary to general practice, these informal consultations were announced in the Daily Programmes of Cancun, namely: 2 Dec. 10–10.45, and 3 Dec. 10–11.30. Extrapolating from this to the practice at SBI 32, and taking into account that the oversight was only one of 3 (4) sub-items, it seems reasonable to assume that the time taken up in informal consultation on oversight of the Operating Entity in 2010 was not more than six hours.

¹⁸ See Annex II.1.

*Global Environment Facility support continues to be in line with guidance from the Conference of the Parties.*¹⁹ This is curious, for clearly something must be wrong with the current oversight regime if after close to two decades Parties still feel the need to reiterate the very same guidance on this issue. But what exactly?

In 2007, the Stockholm Environment Institute (SEI) published a paper assessing, among other things, GEF adherence to guidance from the COP.²⁰ The paper concluded that GEF funds *are not technically adequate for responding to developing countries' needs, owing both to the*

Box 1.1: SBI Draft Guidance to the GEF on funding National Communications

- **2006:** The COP invites the Global Environment Facility, as an operating entity of the financial mechanism of the Convention, ... (b) To provide updated information on the operational procedures for the expedited financing of national communications from Parties not included in Annex I to the Convention, for consideration by the Subsidiary Body for Implementation at its twenty-sixth session;
- **2007:** The COP requests the Global Environment Facility, as an operating entity of the financial mechanism of the Convention:
 - (g) To continue to ensure that financial resources are provided to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention;
 - (j) To refine, as appropriate, operational procedures to ensure the timely disbursement of funds to meet the agreed full costs incurred by those non-Annex I Parties that are in the process of preparing their third and, where appropriate, fourth national communications;
- **2008:** The COP reiterates the following requests to the Global Environmental Facility made by the Conference of Parties at its thirteenth session to the Global Environmental Facility:
 - (a) To continue to ensure that financial resources are provided to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention;
 - (b) To refine, as appropriate, operational procedures to ensure the timely disbursement of funds to meet the agreed full costs incurred by those non-Annex I Parties that are in the process of preparing their third and, where appropriate, fourth national communications;
- **2009:** No guidance (Copenhagen)
- **2010:** The COP requests the Global Environment Facility:
 - (c) To work with its implementing agencies to further simplify its procedures and improve the effectiveness and efficiency of the process through which non-Annex I Parties receive funding to meet their obligations under Article 12, paragraph 1, of the Convention, with the aim of ensuring the timely disbursement of funds to meet the agreed full costs incurred by developing country Parties in complying with these obligations, and to avoid gaps between enabling activities of current and subsequent national communications, recognizing that the process of preparation of national communications is a continuous cycle;
 - (d) To finalize any remaining operational procedures to ensure the timely disbursement of funds for those Parties that decide to access resources for the preparation of their national communications through direct access;

¹⁹ FCCC/SBI/2010/L.38/Add.1, 4 December 2010.

²⁰ Annett Möhner and Richard J.T. Klein, *The Global Environment Facility: Funding for Adaptation or Adapting to Funds?*, Climate and Energy Working Paper, Stockholm Environment Institute, June 2007.

complex design of the funds and to poor implementation of the guidance. Although the paper ruffled some feathers when it first appeared, it does list a number of examples where guidance has been followed,²¹ not just where it was not. More importantly, it stresses that it is important *to understand the nature and reasons for non-adherence to guidance if the situation is to be improved.*

The paper concludes *that non-adherence relates to both the design and the implementation of guidance. The design of guidance can lead to non-adherence, if guidance is unspecific or ambiguous. For example, the COP has not defined adaptation costs in a way that allows the GEF to make a clear distinction between adaptation and development. As a result, the GEF has developed and applied the concepts of additional and incremental costs to determine its share of project funding ... Even if guidance is relatively unambiguous, implementation of the guidance can still contradict the design intent. For example, COP guidance stipulates that funding under the [Special Priority on Adaptation] and the [Special Climate Change Fund] be available only to developing countries, yet countries with economies in transition have received or are about to receive funding as well.*

One issue the paper does not address is that of evaluation. As mentioned earlier, this is an important aspect of COP oversight, as it is not possible to hold someone accountable, or even to provide proper guidance, without an objective evaluation of past performance.

In 1998, the COP issued ***Guidelines for the Review of the Financial Mechanism***, to be implemented by the SBI in their four-yearly reviews (Appendix IV). The first two objectives of the Guidelines are to ensure *conformity with the provisions of Article 11 of the Convention*; and *conformity with the guidance of the Conference of the Parties*. However, the operational focus of the Guidelines is exclusively on the effectiveness of the Operating Entity. Not a single criterion is provided in the Guidelines as how to judge these first two objectives! Moreover, the methodology prescribed in the Guidelines consists of a list of existing sources of information that may be taken into consideration, but not the option of commissioning an external evaluation.

It is therefore not surprising that the reviews carried out by the SBI, using these Guidelines, are not really performance evaluations, particularly as regards adherence to COP guidance. For example, the closest the most recent (the fourth) review gets to making evaluative statements is in its extensive acknowledgment of the GEF's own Overall Performance Study. The rest of the review consists mainly of requests to the GEF – no different from the annual guidance.

In conclusion, the current setup involves an overcrowded agenda leading to mantra guidance, drafted in haste. An inadequate institutional design is as much to be blamed for the oversight shortcomings as anything else. A remedy for the current shortcomings in the COP oversight

²¹ *GEF funding under the Least Developed Countries Fund (LDCF) is more favourable than under the Special Climate Change Fund (SCCF). This responds to guidance from the COP, which requested the GEF to take into account the circumstances of LDCs when developing the co-financing scale (UNFCCC Decision 3/CP.11).[p.10].*

regime of the Financial Mechanism has to involve *enhanced guidance* to, as well as *improved holding to account* of, the Operating Entities.

ANOTHER LOOSE END: DETERMINATION OF FINANCIAL NEEDS

Article 11 of the Convention specified guidance on how to operationalize the Financial Mechanism, not only with respect to overseeing Operating Entities, but also regarding financial needs assessments. Paragraph 3, in particular, demands that the Operating Entity/ies of the Financial Mechanism agree with the COP on arrangements concerning, *inter alia*, the

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

This task was acknowledged in the MOU between the COP and the GEF Council (Appendix III), and the COP decided to refer the issue – together with a draft Proposal submitted during that time by the G77 and China (Appendix V) – for consideration to the SBI at its subsequent session in July 1996. In December 1997, COP 3 (Kyoto) decided to adopt the *Annex to the Memorandum of Understanding [with the GEF Council] on the determination of funding necessary and available for the implementation of the Convention* (Decision 12/CP.3).

A note by the UNFCCC Secretariat on this topic (Appendix V) published in April 2004 describes the Annex in question as prescribing *that in anticipation of a replenishment of the GEF, the COP will make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the COP, in fulfilling their commitments under the Convention over the next GEF replenishment cycle. It outlines information that should be taken into consideration in determining the amount of funding necessary and available for the implementation of the Convention.*

In that context, it is interesting to note the differences between the Annex as adopted, and the G77 and China Proposal. On the ‘supply side’, the Annex introduces information on:

- (d) *Other sources of funding available for the implementation of the Convention.*

On the ‘demand-side’, by contrast, the information on *financial resources requested by developing country Parties to meet the agreed incremental costs of measures covered by Article 4.1 of the Convention* of the Proposal is narrowed down to information *as agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention*. Indeed, the Proposal’s reference to information on:

- (c) *Financial resources requested by developing country Parties to meet the costs of adaptation to the adverse effects of climate change*

is dropped altogether in the Annex.

This cannot be the place for an in-depth analysis of the procedure adopted to implement Article 11 (d) regarding the determination of financial needs. What is, however, abundantly clear is that this determination *does not amount to a full financial needs assessment*, in any sense of the term.

In June 2008, the SBI – in its consideration of the fourth review of the Financial Mechanism – requested the UNFCCC Secretariat to provide information *on the assessment of financing needs [of non-Annex I Parties] to implement mitigation and adaptation measures.*^[22] *In response to this mandate, the secretariat established the National Economic, Environment, and Development Study (NEEDS) for climate change project.*²³

At Cancun (2010), the Secretariat presented a *synthesis report on the NEEDS project*,²⁴ which the SBI noted, and decided to continue considering. Again, this is not the place to discuss the findings of this project. But it is safe to say that its methodology, while still not perfect,²⁵ is clearly closer to what a genuine fully fledged implementation of Art. 11 (d) would require, and hence needs to be taken seriously in any attempt to enhance the implementation of the Financial Mechanism.

²² FCCC/SBI/2008/8, paragraph 30.

²³ FCCC/SBI/2010/INF.7, 24 November 2010.

²⁴ *op. cit.*

²⁵ Apart from certain methodological problems (referred to in the Secretariat note) NEEDS was conducted only in 11 Countries namely: Costa Rica, Egypt, Ghana, Indonesia, Jordan, Lebanon, Maldives, Mali, Nigeria, Pakistan, and the Philippines.

I.3. Tier Two: The push for improved governance and coherence in the delivery of international climate finance

FOUR CORE FUNCTIONS

‘Tier Two’ issues and functions, in our terminology, are issues and functions that are ‘new’ – either connected with the Cancun LCA Agreement (‘the Agreement’, see Annex I below), or issues/functions that might arise in the future. At the heart of this are the *core functions* explicitly assigned to the new Standing Committee (in paragraph 112 of the Agreement) to *assist the Conference of the Parties in exercising its functions with respect to the Financial Mechanism of the Convention*:

- [1] *improving coherence and coordination in the delivery of climate change financing;*
- [2] *rationalization of the Financial Mechanism;*
- [3] *mobilization of financial resources; and*
- [4] *measurement, reporting, and verification of support provided to developing country Parties.*

Some of these functions are clearly related to functions originally raised in Article 11 of the Convention. Functions [3] and [4], in particular, seem to be closely related to the function defined in Article 11.d: *Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.*

Function [2], by contrast, appears to be new, and in need of some clarification, but it seems reasonable to think that it is connected to function [1], which in turn has a respectable pedigree dating back to conclusions of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, as taken note of in the initial guidance by the COP (Decision, 11/CP.1, see Annex II.2).

Improving coherence and coordination in the delivery of climate change financing

Not only has there been a long-term recognition that climate change financing in support of developing countries is fragmented and disorganized, but there is also broad consensus on a need to ***improve the coherence*** of the overall regime. Where there have been considerable differences in the past is on whether this should be achieved through coordinating or consolidating the fragmented funding streams. As it happens, both are required. In establishing the new Green Climate Fund, the COP followed the view of those Parties, particularly from developing countries, that preferred coherence through consolidation. In tasking the Standing Committee with improving the coordination of climate finance delivery, the COP also followed the view of those Parties, particularly from developed countries, that improved coherence of the funding streams should be achieved not through consolidation but through coordination of the existing fragmented funding patterns.

Rationalization of the Financial Mechanism

The Oxford English Dictionary defines ‘Rationalization’ (3. Chiefly Econ. and Sociol.): *The action, fact, or process of applying rational methods of analysis or planning to economic or social organization, esp. in order to achieve maximum profitability or efficiency; spec. the reorganization of a business, industry, etc., so as to reduce or eliminate waste of labour, time, or materials; an instance of this.*²⁶ Among the illustrative quotations supplied in the OED for this meaning, the most interesting in the present context are:

- *One of the most important aspects of the process of ‘rationalization’ of action is the substitution for the unthinking acceptance of ancient custom, of deliberate adaptation to situations in terms of self-interest.*²⁷
- *The company had announced ‘rationalization’ plans meaning the closure of the Dronfield works.*²⁸

Therefore, ‘rationalization’ in the present context could well refer to closing down certain entities of the Financial Mechanism and subsuming their activities under others. How exactly this is to happen is to be looked at by the Standing Committee and should not be pre-judged here. The point here is simply that the usefulness of a plurality of funds under the Convention and its Kyoto Protocol (Green Climate Fund, LDC Fund, Special Climate Change Fund, Adaptation Fund) could be considered under this heading, with the inevitable implications on the usefulness of a plurality of Operating Entities. If all the existing funds are subsumed (e.g. as funding windows) under a single unified fund, then a plurality of Operating Entities would not seem to be particularly useful.

Mobilization of financial resources

Apart from paragraph 112 (Standing Committee) the term ‘mobilization’ appears substantively in two further places in the Cancun LCA Agreement, namely, under ***Shared Vision*** in paragraph 2.d – affirming that *mobilization and provision of scaled-up, new, additional, adequate, and predictable financial resources is necessary* – and, best known, in paragraph 98, recognizing that ***developed country Parties commit, in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries.***²⁹

Paragraph 112 itself tasks the Standing Committee with ***assisting the Conference of the Parties in exercising its functions with respect to the Financial Mechanism of the Convention in terms of ... mobilization of financial resources.*** The Convention obliges developed country Parties to provide financial resources for addressing adaptation and mitigation challenges in developing country Parties. The problem is that what we face today is a challenge that cannot be met with public sector budgetary contributions alone. The cost of meeting the challenge of

²⁶ Oxford English Dictionary. <http://www.oed.com/view/Entry/158509?redirectedFrom=rationalization#eid>

²⁷ M. Weber, (tr. A. M. Henderson & T. Parsons), *The Theory of Social and Economic Organization*, New York: OUP, 1947, i. 112.

²⁸ *Sheffield Star*, 20 November 1976.

²⁹ Emphasis added.

climate change runs into trillions of dollars and necessitates supplementary sources, most likely from the private sector.

Given the complexity of challenge and overlapping mandates, what possible role could the Standing Committee play in ‘mobilizing’ such resources? This is an important technical (and possibly political) question. We believe that the Standing Committee can perform two functions in fulfilling its mandate towards the mobilization of financial resources, namely (i) provide policy level guidance; and (ii) commission relevant independent studies – such as have in the past been produced by bodies outside the UNFCCC.

The Standing Committee should also act as a major platform for interaction with the private sector. It could, for example, establish regular meetings with the private sector in order to delineate the range of options that could mobilize private sector finance.

Measurement, Reporting, and Verification of support³⁰

The phrase ‘measurable, reportable, verifiable’ first appeared in the Bali Plan of Action (‘Bali Road Map’), adopted by the COP in 2007 at its Bali conference, where it gave rise to a heated debate right to the very end,³¹ with regard to whether it should just refer to *nationally appropriate mitigation actions by developing country Parties*, or also to their support and enablement *by technology, financing, and capacity-building*. In the end, the view that it is to apply to both prevailed.

The ‘background motivation’ for the insistence by developing countries in Bali on MRV of support, can be illustrated by the following case study, taken from Müller (2010).

At the resumed session of COP 6 in Bonn in 2006, ministers from the EU15, together with those from Canada, Iceland, New Zealand, Norway, and Switzerland, issued a political commitment in the so-called *Bonn Declaration*, promising that by 2005 they would collectively provide US\$ 410 million annually to developing countries for climate change activities.

In 2009, four years after the deadline set by the Bonn Declaration, Marc Pallemerts and Jonathan Armstrong from the Institute for European Environmental Policy published a paper on their attempts to track the compliance with the Declaration’s political commitment.³² They found that while they were able to ascertain easily how much was paid into the dedicated multilateral climate change funds and instruments, they faced considerable ***difficulties in tracking fragmented bilateral transactions***. Assessing climate-related bilateral funding was

³⁰ This section is based on Benito Müller, *Climate Finance after Tianjin: How to reach a deal at Cancún?*, ecbi Policy Brief November 2010: p. 8f. (Müller (2010))

³¹ See, for example, Benito Müller, *Bali 2007: On the road again! Impressions from the Thirteenth UN Climate Change Conference*, Oxford Energy and Environment Comment, February 2008, in particular the section on ‘The Bali Road Map: The many plots of the Ides of December’.

³² Marc Pallemerts and Jonathan Armstrong, *Financial Support to Developing Countries for Climate Change Mitigation and Adaptation: Is the EU Meeting Its Commitments?*, Institute for European Environmental Policy, January 2009.

problematic both methodologically and practically, because of a lack of data in the National Communications; varying quality of reporting of bilateral funding; inadequate compliance with the requirement of reporting guidelines; a lack of clarity in defining what constitutes new and additional funding; and a lack of clear uniform criteria for determining the bilateral aid projects which are directly relevant to climate change mitigation or adaptation. The authors speculated that countries could easily have taken advantage of these ambiguities, and could have included contributions not entirely relevant to the implementation of the UNFCCC in order to meet their commitments.

The authors were forced to conclude that the *average annual level of financial support to developing countries collectively provided by the 15 EU Member States ... through specific multilateral climate change related funding channels falls well short of the level ... to which they committed themselves. Whether or not the EU is complying with its political commitment under the Bonn Declaration depends entirely on these Member States' bilateral aid efforts and any additional contributions through other multilateral channels. Unfortunately, the information on such efforts ... is insufficient to enable even an informed observer to make a reliable judgment about the volume of aid additional to 2001 levels that is effectively being provided at the present time.*

The preceding account was first published in 2009 as part of a paper on oversight of compliance with financial commitments under the UNFCCC.³³ In response, the author received personal feedback from a senior EU finance negotiator criticizing some of the conclusions put forward by Pallemarts and Armstrong. Emphasizing that it was never the idea that funding should be channelled only through multilateral agencies, this critique focused on the claim that there was insufficient information on bilateral flows to form a judgment on compliance. It stated that the EU15 member states had themselves carried out an assessment of the climate relevance of their bilateral cooperation, resulting in a total figure of around US\$ 1.7bn per annum (for 2005–7). Conceding that *methodologies of different Member States differ, that they are not easy to compare, that there may be flaws (not ill-intended as the authors seem to suggest)*, the critique suggests that *a more objective conclusion or 'reliable judgment' would have been 'all the un-clarity notwithstanding there is a good chance that donors have lived up to the promise in the Bonn Declaration'*.

However, uncertainty about contributions and their comparability is by no means restricted to the context of the Bonn Declaration. In its recent ***Compilation and synthesis of fifth national communications***,³⁴ the UNFCCC Secretariat highlighted a number of key issues regarding the reporting of financial resources, among them:

³³ Benito Müller, *On the Need to Certify: Oversight of compliance with financial commitments under the UN Framework Convention on Climate Change*, Oxford Energy and Environment Comment, December 2009. Available at www.oxfordclimatepolicy.org/publications/mueller.shtml.

³⁴ UNFCCC Secretariat, *Compilation and synthesis of fifth national communications, Addendum: Financial resources, technology transfer, vulnerability, adaptation and other issues relating to the implementation of the Convention by Parties included in Annex I to the Convention*, 20 May 2011, FCCC/SBI/2011/INF.1/Add.2.

- (d) *the main challenges when comparing data across Parties relate to the differences in the sectoral categories used by Annex II Parties to aggregate their financial data, and in the reporting periods/years and currency used by Annex II Parties;*
- (e) *the use of different time bases makes any comparison or aggregation of data significantly difficult. Many Annex II Parties provided information on their financial contributions by year, multi-year period or GEF replenishment cycle, or for several years over a period. Reporting periods vary across Annex II Parties. Several Annex II Parties reported for a multi-year period without annual breakdown or provided information on their contributions over a GEF replenishment cycle;*

The main lesson from these experiences must be that one has to be able to assess contributions and compliance with certainty, not merely probability. Any uncertainty will automatically be interpreted in terms of trying to avoid payments by ‘doctoring the figures’. As concerns trust-building, or rather further trust-erosion, this would be worse than transparent non-compliance.

SUPPLEMENTARY FUNCTIONS

Apart from the four ‘core’ Standing Committee functions listed above, there are a number of tasks identified in the Agreement that either have a bearing on the Standing Committee, or indeed, would best be carried out by it.

There is, for example, the task – identified in paragraph 128 of the Agreement – of establishing how the new Technology Mechanism is to relate to the Financial Mechanism. This issue, and indeed the more general question of *how the other (new) bodies of the UNFCCC regime*, such as the new Adaptation Committee,³⁵ *are to relate to the Financial Mechanism* will need to be kept in mind when deciding on the functions of the Standing Committee.

There are also a number of tasks assigned to the Transitional Committee for designing the new Green Climate Fund in its Terms of Reference (Appendix I), which we believe should ultimately be reflected in functions of the Standing Committee. For example, the Transitional Committee has been charged with providing recommendations to the COP regarding:

- [5] *methods to enhance complementarity between the Fund’s activities and those of other bilateral, regional, and multilateral funding mechanisms and institutions; and*
- [6] *a mechanism to ensure periodic independent evaluation of the Fund’s performance.*³⁶

While it is debatable whether the Transitional Committee is really the right place to design these methodologies, it is clear that putting the GCF/Board in charge of them would be highly

³⁵ paragraph 20.

³⁶ TC TOR, paragraph 1 (e) & (g).

problematic:³⁷ For example, having an *independent evaluation* commissioned by, and report to, the body that is to be evaluated is – as mentioned in Section 1.2 – suboptimal. But who else should be in charge of these functions? Since it stands to reason that other Operating Entities of the Financial Mechanism would equally benefit from independent evaluations, the Standing Committee would seem to be the natural choice, particularly if it supports the provision of COP guidance to these entities.

As to the task of *enhancing complementarity* between bilateral, regional, and multilateral funding mechanisms and institutions (including the GCF), it is equally clear that it would be inappropriate to give this sort of ‘quasi regulatory’ function to any of the entities that are meant to be ‘regulated’. Indeed, this may well be why *improving coherence and coordination in the delivery of climate change financing* is listed in the Agreement as the first ‘core’ function of the Standing Committee (see above). The Standing Committee is clearly the most plausible and natural locus for this function.

Yet another function to be elaborated by the Transitional Committee ought to be carried out by the Standing Committee: According to paragraph 1 (c) of its Terms of Reference, the Transitional Committee is to:

[7] *develop and recommend to the Conference of the Parties for its approval at its seventeenth session operational documents that address [...] methods to manage the large scale of financial resources [...] with the objective of achieving a balanced allocation between adaptation and mitigation.*

This issue was taken up by the Transitional Committee Co-facilitators of Work Stream I in question 5 of their call for submissions by observer organizations on 13 May 2011: *How do we define and achieve ‘balanced allocation’ between adaptation and mitigation?* Two of the three submissions from the Research and Independent NGO (RINGO) constituency touched on this issue, and both agreed that the ‘balance’ in question should be seen as referring *not* to the relative sizes of the GCF mitigation and adaptation windows, but to the *overall global levels of mitigation and adaptation funding*.^{38,39}

It thus stands to reason that judgments regarding the need for redressing imbalances of this type need to be based on information about these global flows, which is not necessarily part of the competency of the GCF or of any other funding entity. Moreover, judgments about a global (im-) balance of funding for mitigation and adaptation are sufficiently political to be

³⁷ Given that the sole purpose of the Transitional Committee is to propose the design for the new Green Climate Fund, one could be forgiven for thinking that whatever the TC designs is to be operated by the Fund. But this does not necessarily follow, and in the present case would be quite inappropriate.

³⁸ Benito Müller and Anju Sharma, ‘Submission of views regarding the questions for the first technical workshop of the Transitional Committee suggested by the co-facilitators of work stream I’, Oxford Institute for Energy Studies, 20 May 2011; www.eurocapacity.org/finance/documents/OIES%20Submission%20final.pdf.

³⁹ Jonathan Pickering, ‘Response to question 5 of Workstream I (Scope, guiding principles, and cross-cutting issues) of the Transitional Committee for the Design of the Green Climate Fund’, The Australian National University, 20 May 2011; www.eurocapacity.org/finance/documents/Green%20Climate%20Fund%20TC%20-%20ANU.pdf.

taken collectively by all Parties, in which case it could clearly be within the mandate of the Standing Committee to support the COP in making these judgments. As it happens, in the Copenhagen draft LCA Decision, it was proposed to assign this function to the Finance Board, the ‘predecessor’ of the Standing Committee (paragraph 4 (d), see Appendix VIII). ***The list of functions proposed for the Finance Board should be as much a guideline for designing the remit of the Standing Committee as the four ‘core functions’ identified in the Cancun Agreements.***

Finally, there are functions that depend on the future evolution of the regime, which the Standing Committee might be best suited to perform. For example, if the Parties were to agree to ***assessed contributions*** for financing climate change activities, then clearly there would need to be a body performing such assessments on behalf of the COP. It stands to reason that the Standing Committee would be best placed to manage such a process.

2. Functions

The UNFCCC Standing Committee should be a *Subsidiary Body of* and *reporting directly to the COP*, assisting it in exercising its functions with respect to the Financial Mechanism of the Convention. As such, the Standing Committee should carry out the tasks mandated by the COP, but – in keeping with the standard practice for parliamentary standing/oversight committees – the Standing Committee should *not* be a decision making body: *decisions remain at the level of the COP*. In order to be able to perform these functions adequately, the Standing Committee should itself be supported by a *dedicated Technical Support Unit* and the UNFCCC Secretariat.

2.1. Guidance, Recommendations and Review

The COP's key function with respect to the Financial Mechanism is 'oversight', i.e. the provision of guidance to, and the holding accountable of, the Operating Entities of the Financial Mechanism of the Convention. By assisting the COP in carrying out this oversight function through the *provision of draft guidance and reviews*, the Standing Committee would provide the assistance to the COP in the *coordination* (between Operating Entities) referred to in the Cancun Agreement. The Cancun Agreement task of assisting the COP in improving *coherence* of the overall climate finance regime, in turn, would be carried out by the Standing Committee through the *provision of draft recommendations*.

GUIDANCE AND RECOMMENDATIONS

The Standing Committee should support the COP by providing:

1. annual synthesis reports of the annual reports by the Operating Entities of the Financial Mechanism of the Convention which, for that purpose, should report directly to the Standing Committee;
2. draft guidance to the Operating Entities;
3. draft decisions on how other UNFCCC bodies, such as the Adaptation Committee or the Technology Transfer Executive Committee, are to relate to the Financial Mechanism;
4. draft decisions/recommendations on rationalizing the Financial Mechanism;
5. draft recommendations/guidance to all actors involved in climate finance, with a view to improving coherence in delivery of finance and complementarity in their approaches, including comparable standards, guidelines, and rules of allocation.
6. draft recommendations/guidance with regard to overcoming thematic and geographical imbalances in the international flows of climate finance.

REVIEW

The Standing Committee should support the COP in reviewing:

1. the accountability of the Operating Entities to the COP, *inter alia* through independent external evaluations;
2. the operational rules and modalities of Operating Entities;
3. the modalities of the Operating Entities with respect to implementation of Art. 11.3 (b) of the Convention;⁴⁰
4. the modalities for reporting and verifying financial support, including certification by recipient countries (if applicable);
5. resource access modalities, including direct access;
6. (and promoting) comparable standards, guidelines, and rules for the allocation of finance;
7. contractual arrangements between the COP and Operating Entities;
8. the scale of assessed contribution, if applicable;
9. the adequacy of resources, in particular the needs for, and sources and flows of, international financial support.

2.2. Reporting and verifying of financial support to developing countries

The Cancun Agreement stipulates in para. 112 that the Standing Committee is to support the COP in the *reporting and verification of support provided to developing country Parties*.⁴¹ In order to provide this support, the Standing Committee should carry out the following functions:

REPORTING

1. set up and manage a Financial Support Registry to record all relevant information on financing channels, both inside and outside the Financial Mechanism, particularly with reference to the information required in performing the review functions;
2. request/invite Operating Entities and other entities involved in providing climate finance to provide required information;

⁴⁰ (b) *Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities, and eligibility criteria;*

⁴¹ Practitioners will be more familiar with the phrase ‘Measurement, Reporting, and Verification’ or ‘MRV’. However, as the support in question is financial, it stands to reason that ‘measurement’ was omitted because it is not really appropriate in the context. The first function under the ‘reporting’ heading would probably be the closest that one could get to measurement in this context.

3. act as a platform of consultation with private sector and civil society, as well as with multilateral and bilateral funding entities;
4. liaise on all relevant matters with other relevant bodies – in particular, but not solely, with Convention bodies such as the Adaptation Committee and Technology Executive Committee;

VERIFYING

5. provide the COP with all necessary support to verify:
 - i. financial flows to be counted against financial obligations under the Convention, including, if applicable, assessed contributions;
 - ii. certification by recipient countries, if applicable.

2.3. Other Functions

1. Support the COP in the mobilization of financial resources, including from the private sector, by *inter alia*:
 - a. developing policy frameworks for mobilizing supplementary finance sources for the guidance of, and recommendation to, the Operating Entities;
 - b. commissioning independent studies on the topic.
2. Report directly to the COP.
3. Fulfil any other function assigned by the COP.

3. Form

As mentioned in the Introduction, ‘form follows function’ is a widely-known principle in the design of governance architectures, yet not all functions are equally demanding on form. Certain functions can be carried out through a number of different forms. In the present context, the most demanding functions in this respect are the ‘Tier One’ oversight functions (Section 1.1).

3.1. Accountability of a ‘National Treasure’

Difficulties in holding institutions to account are by no means unique to the UNFCCC, or even to the UN system. A recent report⁴² by Kitty Ussher, Director of the London-based think tank Demos, provides some interesting reading in this context. Ussher, a former UK Treasury Minister, and her colleague Imogen Walford, had off-the-record conversations with, among others, over 30 senior UK civil servants, advisers, and ministers. They found *a unanimous view that parliamentary scrutiny of the Treasury could be more effective. The passage of the Finance Bill through Parliament was widely considered to be a joke: the technical nature of the subject matter was not conducive to meaningful discussion by MPs. At the same time Parliament was denied the ability to consider some of the big economic questions of the day*

Box 3.1. Quotes from *National Treasure*

One area in pressing need of reform is Parliament’s relationship with the Treasury. There is currently a significant democratic deficit regarding Parliament’s ability to hold the Treasury to account.[37]

The most effective body scrutinising government currently is the Public Accounts Committee. This is because it has the largest staff and greatest access to public accounts information, which has, in the words of a former civil servant, ‘the weight of the National Audit Office behind it – a much more forensic experience’. Its reports have altered government policy. But this committee only ever engages post facto and therefore cannot help prevent poorly constructed finance bills from passing. [38]

In particular, taxation is regarded as a highly technical area and has no real consideration within Parliament. [...] Such a failure to judge systematically the taxation system is an extreme example of Parliament’s current inability to hold the chancellor responsible for the decisions he makes or to judge the efficacy of measures that are proposed. Against such a situation, the Treasury Select Committee is designed to hold ministers to account. Currently, this body, which has a minimum of 11 members, is given little additional research support beyond the usual hard-working handful of clerks. And from this uninspiring base, they are supposed to hold a complex and wide-ranging department responsible. [39]

We recommend that there be a separate taxation select committee that operates in parallel to the Treasury Select Committee, to hold the government to account and to provide a place where backbench MPs can increase their knowledge of the taxation system. This recommendation was supported by the vast majority of those whom we interviewed. [40]

⁴² Kitty Ussher and Imogen Walford, *National Treasure*, March 2011, London: Demos. Available at: www.demos.co.uk/files/National_treasure_-_web.pdf?1299511925.

since MPs lacked rigorous independent information in a format that was useful to them.⁴³ Two of their recommendations are of particular interest in the context of this paper, namely the establishment of:

- *A new select committee specifically on taxation policy [...] to run in parallel with the Treasury Select Committee.*
- *A UK Parliamentary Budget Office, functioning as an economic library for MPs. This would be based on the US Congressional Budget Office and should be established to provide rigorous independent analysis to Parliament on topical matters relating to economic policy.*⁴⁴

The relevance of these recommendations to the discussion on the function and form of the Standing Committee is that in a difficult and highly technical area, parliamentary oversight requires that there be a small parliamentary body, dedicated to the task of holding accountable the relevant institutions on behalf of parliament, with a dedicated technical support team. The arguments put forward in support of these recommendations (excerpts of which are reproduced in Box 3.1) can easily be paraphrased for the present context.

3.2. Subsidiary to whom?

Rule 2.8 of the Convention draft Rules of Procedure defines ‘subsidiary bodies’ as ‘bodies established by Articles 9 and 10 of the Convention, *as well as any body, including committees and working groups, established pursuant to Article 7(2)(i) of the Convention.*’⁴⁵ Technically, it therefore stands to reason that the Standing Committee is a subsidiary body of the Convention. But, as pointed out in a recent advice by the Legal Response Initiative (see Box 3.2), this by itself does not automatically imply that the Standing Committee is to report directly to the COP.

In practical terms, there is only one alternative, namely to report to the Subsidiary Body for Implementation (SBI). To discuss the issue of whether the Standing Committee should report to the COP directly, or via the SBI, it is useful to begin by looking at the option of how it could relate to the ***SBI Contact Group on the Financial Mechanism***, the body that currently reports (to the SBI) on matters relating to the Financial Mechanism.

Re-labelling the Contact Group as ‘Standing Committee’ would simply mean adherence to the *status quo*. Given the experiences with the current system (Section 1.2), it is unlikely that oversight over Operating Entities would be improved if the Contact Group were identified as the Standing Committee, not to speak of the other functions the Standing Committee is meant to perform. The same is true if the Standing Committee were established in parallel to the Contact Group, with the latter retaining its current functions. The only scenario that could

⁴³ *op. cit.*:17.

⁴⁴ *ibid.*

⁴⁵ Emphasis added.

Box 3.2. Quotes from LRI Advice on *Subsidiary Bodies and Finance*

All committees and specialized bodies established by the COP or CMP are technically ‘subsidiary bodies’ but they differ from each other (and the SBI and SBSTA) depending on the provisions (whether in the Convention or COP / CMP decisions) which establish them. These provisions will set out, amongst other things, who can participate, what the mandate of the body is and who the body reports to. In terms of the practice of participants, however, the general view is that only those bodies that have participation of all Parties should be referred to as subsidiary bodies (SBI, SBSTA, AWG-LCA and AWG-KP); but this is not, in our view, strictly correct.

The ‘hierarchy’ of committees/subsidiary bodies and reporting lines is a result of the explicit decision establishing the committee/body rather than established by default.

[...] we would say that the Standing Committee is technically a subsidiary body. However, whether it functions as a ‘typical’ subsidiary body (such as the SBI or SBSTA, with the participation of all Parties) or a specialized body (with restricted participation of the Parties) will depend on how its roles and functions are further elaborated by the Parties pursuant to paragraph 112 of Decision 1/CP.16.

Additionally, who the Standing Committee will report to (i.e. the COP or SBI/SBSTA) is not yet clear and is something the Parties will need to address when elaborating its roles and functions. Based on our responses to part 3 above, there is no reason why it could not report directly to the COP rather than through SBI or SBSTA.

lead to improvements in the current oversight regime is to ***abolish the SBI Contact Group and give its current functions to the Standing Committee.***

This, of course, still leaves open the issue of whether the Standing Committee should report to the SBI or directly to the COP. As the COP and the SBI have the same membership and adhere to the same rules – with exception of the frequency of their meetings – the question of which body the Standing Committee should report to is essentially one of ***political status***: is it to be accorded the same status as the existing two main subsidiary bodies, or is it to be a ‘second-tier’ body on par with, say, the Expert Group on Technology Transfer, or the LDC Expert Group?

Given the importance of the functions that the Standing Committee is to perform – not only regarding the enhancement of COP oversight over Operating Entities, but particularly the ones envisaged in the Cancun Agreement⁴⁶ – it is difficult to see how the Standing Committee could perform satisfactorily if it were relegated to a second-tier status.

This is why it is imperative that the Standing Committee not only ***takes over the finance agenda items of the SBI***, but is also given equal status by ***reporting directly to the COP.***

⁴⁶ Indeed, a number of (developed country) Parties have been arguing that the sort of functions assigned to the Standing Committee in the Cancun Accords could only be performed by some high-level Panel/Forum.

3.3. Membership: Composition and Selection

OPEN-ENDED OR REPRESENTATIVE BODY?

Should the Standing Committee be an ‘open-ended’ subsidiary body – i.e. should all Parties be given direct access (as in the case of the SBI or the Subsidiary Body for Scientific and Technological Advice (SBSTA)), or should it be a representative body⁴⁷ with a selected number of Party representatives?

There are two key reasons why we believe that only the representative model is viable. For one, ‘open-endedness’ becomes meaningless if Parties do not have the means to attend. Given the constant UNFCCC budget problems, it is therefore unlikely that an open-ended Standing Committee could meet other than in conjunction with the other open-ended subsidiary bodies, that is to say (at most) twice a year. This, however, has proven to be inadequate even for the traditional functions of supporting the COP in giving guidance to, and holding accountable, the hitherto sole Operating Entity of the Financial Mechanism. It is unlikely that it would prove to be more effective in doing so for the envisaged increased number of Operating Entities, not to speak of all the new functions of the Standing Committee (see Section 2).

An open-ended approach is also questionable in light of the overwhelming practice of national parliaments when carrying out functions analogous to those envisaged for the Standing Committee. The vast majority, if not all, of parliamentary standing/oversight committees are limited in number and not open-ended. It stands to reason that this is due to a general recognition of the fact that the sort of work that these committees carry out cannot be done in plenary. And there is little reason why this should not apply to UN plenaries as well, especially if they are not populated by full-time members.

BALANCED AND EQUITABLE REPRESENTATION

Article 11.2 of the Convention stipulates that the Financial Mechanism *shall have an equitable and balanced representation of all Parties within a transparent system of governance*. While at present it is not quite clear what this refers to, it certainly would have to apply to a representative Standing Committee. So who should be on the Standing Committee?

In the same vein in which ‘possession is nine-tenths of the law’, *precedence* is nine-tenths of a successful argument in the present context. The most recent potential precedent in the context of establishing a small body is the Transitional Committee.

As listed in Table 3.1, the Transitional Committee has 40 members, 15 from developed and 25 from developing countries. The 63 per cent share of developing country representatives is

⁴⁷ Note that according to the Rules of Procedures of the COP [FCCC/CP/1996/2], which are deemed to apply to all subsidiary bodies, it is clearly envisaged that they need not be open-ended: *In the case of a subsidiary body that is not open-ended, a majority of the Parties designated by the Conference of the Parties to participate therein shall constitute a quorum.* [Rule 27.3]

Table 3.1. UNFCCC Electoral Constituencies and Seat Allocation

	<i>Africa</i>	<i>Asia</i>	<i>G'LAC</i>	<i>EE</i>	<i>WEOG</i>	<i>AI</i>	<i>NAI</i>	<i>AOSIS</i>	<i>LDC</i>	<i>Total</i>	<i>D'ed</i>	<i>D'ing</i>
<i>Bureau</i>	2	2	2	2	2			1		11	36%	64%
<i>CDM EB</i>	1	1	1	1	1	2	2	1		10	40%	60%
<i>EGTT</i>	3	3	3	8			1	1		19	42%	58%
<i>AFB</i>	2	2	2	2	2	2	2	1	1	16	38%	63%
<i>TC</i>	7	7	7	15			0	2	2	40	38%	63%
<i>TEC</i>	(3)	(3)	(3)			9	9	1	1	20	45%	55%
										<i>Av.</i>	40%	60%
<i>ECOSOC</i>	14	11	10	6	13					54	35%	65%

Source: Table 1 in Benito Müller, *UNFCCC – The Future of the Process: Remedial Action on Process Ownership and Political Guidance*, Climate Strategies Brief, Feb. 2011; www.oxfordclimatepolicy.org

Legend

G'LAC: GRULAC

AI: Annex I

NAI: non-Annex I

D'ed: Developed country constituencies (EE, WEOG, Annex I)

D'ing: Developing country constituencies

marginally above the 60 per cent average, but still less than the 65 per cent developing country membership share in the UN Economic and Social Council ECOSOC,⁴⁸ which is often seen as the template for many of these small UN bodies. One option could therefore be *to follow this precedent of a 'regionally balanced' model* in selecting the members of the Standing Committee.

However, the selection of the members for the Transitional Committee has been far from easy. Indeed, apart from the Africa and the LDC Group – both incidentally negotiating groups – none of the other regional constituencies managed to keep the deadline for nominations. Moreover, the fact that most of the political groupings straddle different regions meant that some of them managed to get what some regarded as a disproportionate representation on the Transitional Committee.⁴⁹

Is there a plausible alternative, keeping in mind the strictures of Article 11.2? A recent Climate Strategies (CS) paper on the future of the UNFCCC process⁵⁰ considered in some

⁴⁸ www.un.org/en/ecosoc/about/members.shtml

⁴⁹ The case in point is the Environmental Integrity Group: **Republic of Korea**, Lichtenstein, **Mexico**, Monaco, and **Switzerland** (with TC members highlighted in bold).

⁵⁰ Benito Müller, *UNFCCC – The Future of the Process: Remedial Action on Process Ownership and Political Guidance*, Climate Strategies Brief February 2011, available at www.oxfordclimatepolicy.org/.

detail the issue of how to select *small drafting groups* with a legitimate representation during negotiations, so as to maximize the chances of resulting draft documents being adopted by

Table 3.2. Two Politically Balanced Models

	(A)	(B)
G77 and China*	9	18
Umbrella Group**	3	6
European Union**	3	6
Least Developed Countries*	2	4
Alliance of Small Island States*	2	4
Environmental Integrity Group**	1	1
Non-Aligned	1	1
Total	21	40
* = <i>Developing</i>	62%	65.00%
** = <i>Developed</i>	33%	32.50%
<i>Non-Aligned</i>	5%	2.50%

the represented whole (COP, CMP, SBI, etc.). Keeping in mind the nature of the mandate of the Standing Committee, namely to support the COP, and the functions discussed in the previous Section, it stands to reason that the nature of the representation required on the Standing Committee is precisely the same: to a large extent the Standing Committee is simply a standing *small drafting group* with the task of producing documents for adoption by the COP.

The CS paper proposal of how to achieve this is to switch from a ‘regional’ to a *‘political’ balance*, in the sense that political negotiating groups are charged directly with selecting a specific number of representatives. The main problem with this approach was to find which groups should be included as constituencies, so as to ensure not only that all major interest groupings are included, but also that no Party remains unrepresented. The model suggested in Table 3.2 includes three developing country constituencies (G77 and China, AOSIS, and LDCs) and three developed country constituencies (EU, Umbrella Group, EIG), jointly covering nine-tenths of all Parties, with a ‘Non-aligned’ seat to be chosen by the remaining 16 Parties that do not belong to any of these six constituencies.

The CS paper puts forward a general equation concerning the number of seats to be allocated to the different constituencies. While there are many solutions, a minimum number of representatives – namely 21 – is required, and one particular solution is given as model (A) in Table 3.2; for the sake of comparison, a solution for 40 representatives is given as model (B). Possibly the best alternative to the TC model would be to use model (A) for 21 members and 21 alternates.

3.4. Other Architectural Elements – Secretarial Support

The concept of ‘architectural form’ with reference to a body such as the Standing Committee, of course, comprises elements other than its relationship to a superordinate governing body and its composition. Indeed, a lot of energy has been put into negotiating these other elements, in the process of establishing other entities related to the Financial Mechanism, in particular the Adaptation Fund, where issues such as decision making rules, and the nature of the Trustee and Secretariat were hotly debated.

Fortunately, this is unlikely to be the case for the Standing Committee. For one, being a subsidiary body of the COP, the Rules of Procedure of the COP are deemed to *apply mutatis mutandis to the proceedings of the subsidiary bodies*.⁵¹ As to the provision of secretariat services, there is equally no choice: according to Article 12.1, the first function of the UNFCCC Secretariat is: *To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required.*

In this context, lessons can be learned from national examples such as the one discussed in Section 3.1, in that the effectiveness of a body such as the Standing Committee depends crucially on the provision of dedicated technical support, which is why the Standing Committee should be supported by a dedicated *Technical Support Unit* at the UNFCCC Secretariat.

⁵¹ Rule 27.1, FCCC/CP/1996/2.

Appendices

I. Cancun LCA-Agreement: Relevant language

46. *Decides* on the following work programme for the development of modalities and guidelines described above, building on existing reporting and review guidelines, processes and experiences:

- (a) The revision of guidelines, as necessary, on the reporting of national communications, including the biennial report:
 - (i) The provision of financing, through enhanced common reporting formats, methodologies for finance and tracking of climate-related support;

52. *Decides* that, in accordance with Article 4, paragraph 3, of the Convention, ***developed country Parties shall provide enhanced financial, technological and capacity-building support*** for the preparation and implementation of nationally appropriate mitigation actions of developing country Parties and for enhanced reporting by these Parties;

66. *Agrees* on a work programme for the development of modalities and guidelines for: facilitation of support to nationally appropriate mitigation actions through a registry; measurement, reporting and verification of supported actions ***and corresponding support***; ...

Long-term finance

98. *Recognizes* that developed country Parties commit, in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries;

99. *Agrees* that, in accordance with paragraph 1(e) of the Bali Action Plan, funds provided to developing country Parties may come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources;

100. *Decides* that a significant share of new multilateral funding for adaptation should flow through the Green Climate Fund;

Green Climate Fund

102. *Decides* to establish a Green Climate Fund, to be designated as an Operating Entity of the Financial Mechanism of the Convention under Article 11, with arrangements to be concluded between the Conference of the Parties and the Green Climate Fund to ensure that it is accountable to and functions under the guidance of the Conference of the Parties, to support projects, programmes, policies and other activities in developing country Parties using thematic funding windows;

Standing Committee

112. *Decides* to establish a Standing Committee under the Conference of the Parties to assist the Conference of the Parties in exercising its functions with respect to the Financial Mechanism of the Convention in terms of improving coherence and coordination in the delivery of climate change financing, rationalization of the Financial Mechanism, mobilization of financial resources and measurement, reporting and verification of support provided to developing country Parties; Parties agree to further define the roles and functions of this Standing Committee.

Work programme for the Ad Hoc Working Group on Long-term Cooperative Action under the Convention in 2011 on technology development and transfer

128. *Underlines* the importance of continued dialogue among Parties in 2011 through the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, including on the following matters, with a view to the Conference of the Parties taking a decision at its seventeenth session, in order to make the Technology Mechanism fully operational in 2012:

(d) The potential links between the Technology Mechanism and the Financial Mechanism;

Capacity Building

131. *Also decides* that financial resources for enhanced action on capacity-building in developing country Parties should be provided by Parties included in Annex II to the Convention and other Parties in a position to do so through the current and any future Operating Entities of the Financial Mechanism, as well as through various bilateral, regional and other multilateral channels, as appropriate;

Terms of reference for the design of the Green Climate Fund

1. The Transitional Committee shall recommend to the Conference of the Parties for its approval at its seventeenth session and shall develop operational documents that address, inter alia:

(c) Methods to manage large scale of financial resources from a number of sources and deliver through a variety of financial instruments, funding windows and access modalities, including direct access, with the *objective of achieving balanced allocation between adaptation and mitigation*;

(e) Methods to enhance complementarity between the Fund's activities and those of other bilateral, regional and multilateral funding mechanisms and institutions;

(g) A mechanism to ensure periodic independent evaluation of the Fund's performance;

II. The Convention

ARTICLE 11. FINANCIAL MECHANISM

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.

2. The Financial Mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

3. The Conference of the Parties and the entity or entities entrusted with the operation of the Financial Mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

(a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;

(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

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

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the Financial Mechanism and take appropriate measures.

ARTICLE 10. SUBSIDIARY BODY FOR IMPLEMENTATION

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, this body shall:

- (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;
- (b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2 (d); and
- (c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

ARTICLE 4. COMMITMENTS

2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and

thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

ARTICLE 12. COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:

- (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
- (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
- (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:

- (a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2 (a) and 2 (b); and
- (b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2 (a).

ART. 21. INTERIM ARRANGEMENTS

3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the Financial Mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

III. MOU between the COP and the GEF Council

MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE PARTIES AND THE COUNCIL OF THE GLOBAL ENVIRONMENT FACILITY

Purpose of arrangements

1. The purpose of this Memorandum is to give effect to the respective roles and responsibilities of the COP, the supreme body of the Convention, and the GEF, the international entity entrusted with the operation of the Financial Mechanism and to provide for the required interaction between them under Article 11 of the Convention and paragraphs 26 and 27 of the Instrument.

Determination and communication of guidance from the COP

2. The COP will, pursuant to Article 11.1, decide on policies, programme priorities and eligibility criteria related to the Convention for the Financial Mechanism which shall function under the guidance of and be accountable to the COP.

3. The COP will, after each of its sessions, communicate to the Council of the GEF any policy guidance approved by the COP concerning the Financial Mechanism.

Conformity with COP guidance

4. The Council will ensure the effective operation of the GEF as a source of funding activities for the purposes of the Convention in conformity with the guidance of the COP. It will report regularly to the COP on its activities related to the Convention and on the conformity of those activities with the guidance received from the COP.

Reconsideration of funding decisions

5. The funding decisions for specific projects should be agreed between the developing country Party concerned and the GEF in conformity with policy guidance from the COP. The Council of the GEF is responsible for approving the GEF work programmes. If any Party considers that a decision of the Council regarding a specific project in a proposed work programme does not comply with the policies, programme priorities and eligibility criteria established by the COP in the context of the Convention, the COP should analyse the observations presented to it by the Party and take decisions on the basis of compliance with such policies, programme priorities and eligibility criteria. In the event that the COP considers that this specific project decision does not comply with the policies, programme priorities and eligibility criteria established by the COP, it may ask the Council of the GEF for further clarification on the specific project decision and in due time may ask for a reconsideration of that decision.

Reports from the GEF to the COP

6. Annual reports of the GEF will be made available to the COP through its secretariat. Other official public documentation of the GEF will also be made available to the COP through its secretariat. In order to meet the requirement of its accountability to the COP, the Annual Report of the GEF will cover all GEF-financed activities carried out in implementing the Convention, whether such activities are carried out by the GEF Implementing Agencies, the GEF Secretariat or by executing agencies implementing GEF-financed projects. To this end, the Council of the GEF will require all such bodies, with respect to GEF-financed activities, to comply with GEF policy on disclosure of information.

7. In its reporting on GEF-financed activities under the Financial Mechanism, the GEF should include specific information on how it has applied the guidance and decisions of the COP in its work related to the Convention. This report should be of a substantive nature and incorporate the programme of GEF activities in

the areas covered by the Convention and an analysis of how the GEF, in its operations related to the Convention, has implemented the policies, programme priorities and eligibility criteria established by the COP. In particular, a synthesis of the different projects under implementation and a listing of the projects approved by the Council in the climate change focal area as well as a financial report with an indication of the financial resources required for those projects should be included. The Council should also report on its monitoring and evaluation activities concerning projects in the climate change focal area.

8. The Council of the GEF may seek guidance from the COP on any matter it considers relevant to the operation of the Financial Mechanism of the Convention.

Determination of funding necessary and available

9. In accordance with Article 11.3(d) of the Convention, which calls for arrangements to determine in a predictable and identifiable manner the amount of funding necessary and available for the implementation of the Convention and the conditions under which that amount shall be periodically reviewed, the COP and the Council shall jointly determine the aggregate GEF funding requirements for the purpose of the Convention. Procedures to facilitate such a joint determination will be developed by the COP and the Council and annexed to this Memorandum. [Decision 12/CP.2; FCCC/CP/1996/15/Add.1:p.58]

IV. Guidelines for the Review of the Financial Mechanism

ANNEX TO DECISION 3/CP.4, FCCC/CP/1998/16/ADD.1

A. Objectives

In accordance with Article 11.4 of the Convention, the objectives will be to review the Financial Mechanism and take appropriate measures regarding:

- (a) Its conformity with the provisions of Article 11 of the Convention;
- (b) Its conformity with the guidance of the Conference of the Parties (COP);
- (c) The effectiveness of the activities it funds in implementing the Convention;
- (d) Its effectiveness in providing financial resources on a grant or concessional basis, including for the transfer of technology, for the implementation of the Convention's objective on the basis of the guidance provided by the COP;
- (e) Its effectiveness in providing resources to developing country Parties under Article 4.3 of the Convention.

B. Methodology

The review shall draw upon the following sources of information:

- (a) Information provided by the Parties on their experiences regarding the Financial Mechanism;
- (b) Annual reviews by the COP on the conformity of the activities of the Financial Mechanism with the guidance of the COP;
- (c) The annual report of the Global Environment Facility (GEF) to the COP on its activities as the Operating Entity of the Financial Mechanism, the annual reports of the GEF and other relevant GEF policy and information documents;
- (d) Reports from the GEF monitoring and evaluation programme;

- (e) Reports from the United Nations Commission on Sustainable Development and relevant bilateral and multilateral funding institutions;
- (f) Relevant information provided by other intergovernmental and non-governmental organizations.

C. Criteria

The effectiveness of the Financial Mechanism will be assessed taking into account the following:

- (a) The transparency of decision-making processes;
- (b) The adequacy, predictability and timely disbursement of funds for activities in developing country Parties;
- (c) The responsiveness and efficiency of the GEF project cycle and expedited procedures, including its operational strategy, as they relate to climate change;
- (d) The amount of resources provided to developing country Parties, including financing for technical assistance and investment projects;
- (e) The amount of finance leveraged;
- (f) The sustainability of funded projects.

V. Determination of Funding Needs

ANNEX ON THE DETERMINATION OF FUNDING NECESSARY AND AVAILABLE FOR THE IMPLEMENTATION OF THE CONVENTION

1. *Decides* to refer the text of the annex on the determination of funding necessary and available for the implementation of the Convention adopted by the Council of the Global Environment Facility and the draft annex submitted by the Group of 77 and China (FCCC/SBI/1996/L.4) for consideration by the Subsidiary Body for Implementation at its next session; [Decision 13/CP.2; FCCC/CP/1996/15/Add.1:p.60]

DRAFT PROPOSAL SUBMITTED BY THE GROUP OF 77 AND CHINA

Recalling Article 11.1 of the Convention which, in the relevant part, states that the Financial Mechanism of the Convention shall function under the guidance of and be accountable to the Conference of the Parties, as well as Article 4.7 and 4.8 of the Convention;

Mindful that, in accordance with Article 11.3(d) of the Convention, the amount of funding necessary and available for the implementation of the Convention and the conditions under which that amount is to be reviewed, shall be determined in a predictable and identifiable manner;

The aggregate GEF funding requirements for the purpose of the Convention shall be determined in accordance with the following procedures

Determination of funds necessary

1. In anticipation of a replenishment of the GEF, the COP will make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the COP, in fulfilling their commitments under the Convention over the next GEF replenishment cycle, taking into account:

- (a) The amount of funds necessary to meet the agreed full costs to be incurred by developing country Parties in order to prepare their national communications under Article 12.1 of the Convention on the basis of the guidelines for national communications of non-Annex I Parties adopted by the Conference of the Parties at its second session;
- (b) Financial resources requested by developing country Parties to meet the agreed full incremental costs of measures covered by Article 4.1 of the Convention;
- (c) Financial resources requested by developing country Parties to meet the costs of adaptation to the adverse effects of climate change;
- (d) Information communicated to the COP from the GEF on the number of eligible programmes and projects that were submitted to the GEF, the number that were approved for funding, and the number that were turned down owing to lack of resources.

Availability of funding

- 2. The GEF will intimate to the COP the funds that are likely to be available over the next replenishment period.
- 3. The GEF replenishment will be based on the COP's assessment.
- 4. On the occasion of each replenishment, the GEF will, in its regular report to the COP as provided for in paragraphs 6 and 7 of this Memorandum of Understanding, indicate how it has responded during the replenishment cycle to the COP's previous assessment prepared in accordance with paragraph 1 of this annex, inform the COP of the conclusion of replenishment negotiations and indicate the amount of new and additional funding to be contributed to the GEF trust fund in the next replenishment cycle for the purposes of the GEF, including the implementation of the Convention. The GEF shall clearly indicate the rationale by which the amount described as "new and additional" is regarded as such, *vis-à-vis* other sources of Official Development Assistance.

IMPLEMENTATION OF DECISIONS 12/CP.2 AND 12/CP.3: DETERMINATION OF FUNDING FOR THE IMPLEMENTATION OF THE CONVENTION, NOTE BY THE UNFCCC SECRETARIAT

FCCC/SBI/2004/6; 6 April 2004

I. Introduction

A. Mandate

- 1. The Conference of the Parties (COP) by its decision 5/CP.8, requested the secretariat, in consultation with the secretariat of the Global Environment Facility (GEF), to prepare for consideration by the Subsidiary Body for Implementation (SBI) at its twentieth session a report on the implementation of decisions 12/CP.2 and 12/CP.3 in accordance with Article 11 of the Convention on the determination of funding necessary and available for the implementation of the Convention.

B. Scope of the note

- 2. This document outlines the arrangements for the determination of funding necessary and available for the implementation of the Convention as contained in the annex to the memorandum of understanding (MOU) between the COP and Council of the GEF adopted by the COP at its third session. It also summarizes the process adopted by the GEF to replenish its Trust Fund in 1995, 1998 and 2002. It further presents the timeline of the forthcoming replenishment and a possible timeline for inputs by the COP so that the funding needs assessment can be taken into consideration during the negotiations on the fourth replenishment of the GEF Trust Fund.

C. Possible action by the Subsidiary Body for Implementation

3. The SBI may wish to agree on the steps to be taken to assess the funding needs for the implementation of the Convention, prior to the fourth replenishment of the GEF Trust Fund.

II. Agreement between the Conference of the Parties and the Council of the Global Environment Facility

4. Article 11.3(d) of the Convention specifies that arrangements must be put in place to determine in a predictable and identifiable manner the amount of funding necessary and available for the implementation of the Convention and the conditions under which that amount shall be periodically reviewed. The COP, by its decision 12/CP.3, approved and brought into force the annex to the MOU on the determination of funding necessary and available for the implementation of the Convention. The text of this annex is contained in document FCCC/SBI/1996/14, annex I. The COP and the Council of the GEF will jointly determine the aggregate GEF funding requirements for the purpose of the Convention in accordance with the procedures outlined in the annex to the MOU.
5. The annex to the MOU prescribes that in anticipation of a replenishment of the GEF, the COP will make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the COP, in fulfilling their commitments under the Convention over the next GEF replenishment cycle. It outlines information that should be taken into consideration in determining the amount of funding necessary and available for the implementation of the Convention. These include:
 - (a) The amount of funds necessary to meet the agreed full costs to be incurred by developing country Parties in order to prepare their national communications under Article 12.1 of the Convention on the basis of the guidelines for national communications of non-Annex I Parties adopted by the COP at its second session, and the information communicated to the COP under Article 12 of the Convention;
 - (b) Financial resources needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by Article 4.1 of the Convention and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention;
 - (c) Information communicated to the COP from the GEF on the number of eligible programmes and projects that were submitted to the GEF, the number that were approved for funding, and the number that were turned down owing to lack of resources;
 - (d) Other sources of funding available for the implementation of the Convention.
6. The GEF replenishment negotiations will fully and comprehensively take into account the assessment by the COP.
7. On the occasion of each replenishment, the GEF is expected, in its regular report to the COP, to indicate how it has responded during the replenishment cycle to the previous assessment by the COP. The GEF is also to inform the COP of the conclusion of replenishment negotiations and indicate the amount of new and additional funding to be contributed to the GEF Trust Fund in the next replenishment cycle. In deliberating on the reports submitted to it by the GEF, the COP may consider the adequacy of the resources available for implementation of the Convention.
8. The reiteration of this process on the occasion of each replenishment will present the opportunity to review the amount of funding necessary and available for the implementation of the Convention in accordance with Article 11.3(d).

VI. Initial COP Guidance

INITIAL GUIDANCE ON POLICIES, PROGRAMME PRIORITIES AND ELIGIBILITY CRITERIA TO THE OPERATING ENTITY OR ENTITIES OF THE FINANCIAL MECHANISM [11/CP.1]

2. *Also decides* to take note of the following conclusions of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change:

(a) Outside the framework of the Financial Mechanism,

Consistency should be sought and maintained between activities (including those related to funding) relevant to climate change undertaken outside the framework of the Financial Mechanism and the policies, programme priorities and eligibility criteria for activities as relevant, established by the Conference of the Parties. Towards this end and in the context of Article 11.5 of the Convention, the secretariat should collect information from multilateral and regional financial institutions on activities undertaken in implementation of Article 4.1 and Article 12 of the Convention; this should not introduce new forms of conditionalities.

VII. Additional (Draft) Guidance to the GEF as adopted in the SBI regarding National Communications

2010

4. Requests the Global Environment Facility:

(c) To work with its implementing agencies to further simplify its procedures and improve the effectiveness and efficiency of the process through which non-Annex I Parties receive funding to meet their obligations under Article 12, paragraph 1, of the Convention, with the aim of ensuring the timely disbursement of funds to meet the agreed full costs incurred by developing country Parties in complying with these obligations, and to avoid gaps between enabling activities of current and subsequent national communications, recognizing that the process of preparation of national communications is a continuous cycle;

(d) To finalize any remaining operational procedures to ensure the timely disbursement of funds for those Parties that decide to access resources for the preparation of their national communications through direct access;

(e) To provide detailed information on funding for projects that have been identified in the national communications of non-Annex I Parties in accordance with Article 12, paragraph 4, of the Convention and subsequently submitted and approved.

(e) To provide detailed information on funding for projects that have been identified in the national communications of non-Annex I Parties in accordance with Article 12, paragraph 4, of the Convention and subsequently submitted and approved.

2008⁵²

2. Requests the Global Environment Facility:

(f) To ensure, as a top priority, that sufficient financial resources are provided to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention, noting and welcoming that a number of Parties not included in the Annex I to the Convention (non-Annex I Parties) plan to initiate the preparation of their third or fourth national communications by the end of the fourth replenishment of the Global Environmental Facility;

3. Invites the Global Environmental Facility to inform its implementing agencies of the guidelines for the preparation of national communications from non-Annex I Parties and of relevant provisions of the Convention,

⁵² Apparently, there was no guidance adopted in 2009 (Copenhagen)

in particular its Article 4, paragraph 3, on the provision of new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention;

4. Reiterates the following requests to the Global Environmental Facility made by the Conference of Parties at its thirteenth session to the Global Environmental Facility:

(a) To continue to ensure that financial resources are provided to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention;

(b) To refine, as appropriate, operational procedures to ensure the timely disbursement of funds to meet the agreed full costs incurred by those non-Annex I Parties that are in the process of preparing their third and, where appropriate, fourth national communications;

(c) To assist, as appropriate, non-Annex I Parties in formulating and developing project proposals identified in their national communications in accordance with Article 12, paragraph 4, of the Convention and decision 5/CP.11, paragraph 2;

(d) To invite the Global Environmental Facility to continue to provide information on funding for projects that have been identified in the national communications of non-Annex I Parties in accordance with Article 12, paragraph 4, of the Convention and subsequently submitted and approved;

(e) To work with its agencies to continue to simplify their procedures and improve the effectiveness and efficiency of the process through which non-Annex I Parties receive funding to meet their obligations under Article 12, paragraph 1, of the Convention, with the aim of ensuring the timely disbursement of funds to meet the agreed full costs incurred by developing country Parties in complying with these obligations;

2007

1. Requests the Global Environment Facility, as an Operating Entity of the Financial Mechanism of the Convention:

(g) To continue to ensure that financial resources are provided to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1, of the Convention;

(i) To work with its implementing agencies to continue to simplify its procedures and improve the effectiveness and efficiency of the process through which Parties not included in non-Annex I to the Convention (non-Annex I Parties) receive funding to meet their obligations under Article 12, paragraph 1, of the Convention, with the aim of ensuring the timely disbursement of funds to meet the agreed full costs incurred by developing country Parties in complying with these obligations;

(j) To refine, as appropriate, operational procedures to ensure the timely disbursement of funds to meet the agreed full costs incurred by those non-Annex I Parties that are in the process of preparing their third and, where appropriate, fourth national communications, in the light of paragraphs 1 (g)–(i) above;

(k) To assist, as appropriate, non-Annex I Parties in formulating and developing project proposals identified in their national communications in accordance with Article 12, paragraph 4, of the Convention and decision 5/CP.11, paragraph 2;

(l) To ensure, together with its implementing agencies, that the analysis of project proposals for the financing of second and subsequent national communications is consistent with the guidelines for the preparation of national communications from non-Annex I Parties;³

2. Invites the Global Environment Facility:

(a) To continue to provide information on funding for projects identified in the national communications of non-Annex I Parties⁴ in accordance with Article 12, paragraph 4, of the Convention and subsequently submitted and approved;

(b) To consider the views of, and any concerns expressed by, Parties regarding their current experiences with the Global Environment Facility and its implementing agencies in relation to the provision of financial support for the preparation of national communications from non-Annex I Parties, as contained in documents FCCC/SBI/2007/MISC.13 and Add.1;

2006

2. Invites the Global Environment Facility, as an Operating Entity of the Financial Mechanism of the Convention:

(a) To further simplify its procedures and improve the efficiency of the process by which non-Annex I Parties receive funding to meet their obligations under Article 12, paragraph 1, of the Convention, with the aim of ensuring the timely disbursement of funds to meet the agreed full costs incurred by developing country Parties in complying with these obligations;

(b) To provide updated information on the operational procedures for the expedited financing of national communications from Parties not included in Annex I to the Convention, for consideration by the Subsidiary Body for Implementation at its twenty-sixth session;

VIII. Enhanced action on the provision of financial resources and investment

OUTCOME OF THE WORK OF THE AD HOC WORKING GROUP ON LONG-TERM COOPERATIVE ACTION UNDER THE CONVENTION – DRAFT CONCLUSIONS PROPOSED BY THE AWG-LCA CHAIR IN COPENHAGEN

FCCC/AWGLCA/2009/L.7/Add.2/Rev.1

[Finance Board]

- [2. A Finance Board of the Financial Mechanism shall be established under the guidance of and be accountable to the Conference of the Parties;]
- [3. The Finance Board shall have an equitable and balanced representation of all Parties within a transparent system of governance in accordance with Article 11, paragraph 2, of the Convention;]
- [4. The Finance Board of the Financial Mechanism shall:
 - (a) Provide [guidance][assistance] to, and ensure accountability to the Conference of the Parties of, all Operating Entities of the Financial Mechanism in accordance with Article 11 of the Convention;
 - (b) Assess the needs for, and sources and flows of, international finance to support activities to address climate change;
 - (c) Recommend a balanced allocation of funding across thematic areas of the Operating Entities of the Financial Mechanism based on the information provided by all operating entities;
 - (d) Recommend provisions for unifying modalities to measure, report and verify the support provided to developing country Parties for enhanced action on mitigation, and to monitor, report and review the support provided to developing country Parties for enhanced action on adaptation;
 - (e) Review modalities of Operating Entities in order to provide simplified, improved, effective and equitable access to financial resources in a timely manner, including direct access;
 - (f) Upon request, provide advice and information to assist developing country Parties in matching financial support for their mitigation and adaptation needs;
 - (g) Report to the Conference of the Parties on a regular basis;
 - (h) Fulfil any other functions assigned to it by the Conference of the Parties;]
- [5. The Finance Board shall be serviced by a secretariat;]

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