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“Sub-optimal” Outcome in the Transitional Committee – No Consensus on the Design of the Green Climate Fund

A Summary Report of the Fourth and Final TC Meeting in Cape Town

By Liane Schalatek, Heinrich Böll Stiftung North America

The seven months long process to design a new Green Climate Fund (GCF), on which a 40 member Transitional Committee (TC) composed of 25 representatives from developing and 15 from developed countries had embarked since the end of April, ended in Cape Town, South Africa on October 18th with – in the words of host and co-chairman Trevor Manuel of South Africa -- a “sub-optimal” outcome, if not outright failure to complete its mandate, as some countries alleged. Tasked to come up with a draft governing instrument laying out the objectives and mission, the governance structures and core operational modalities of the new global climate fund, the 40 TC members failed to reach a consensus on the proposed text.

TC Leaders Trevor Manuel from South Africa, Burhan Gafoor from Singapore and Kjetil Lund from Norway in consultation with the head of the TC Secretariat, Henning Wuester, about next steps…
Photo: Schalatek

While most country members noted that they were unable to agree with some provisions in the draft governing instrument, but were willing to go along with it for the process’ sake, only the United States and Saudi Arabia rejected the document outright in its current form, asked for further negotiations and thus denied the unanimous agreement needed to recommend the text to the Conference of the Parties (COP) of the UN Framework Convention on Climate Change (UNFCCC) for adoption.

Instead, COP 17 in Durban will consider and approve a governing instrument that in all likelihood will be opened up for renegotiation – this time among the 194 members of the UNFCCC, instead of the narrower circle of 40 in the Transitional Committee, making consensus and an agreement acceptable to both developed and developing countries even more elusive. With this development, it is almost certain that the new Green Climate Fund will not be able to start its work in early 2012, if at all. And the obstacles for a successful outcome for global climate negotiations at the Durban “African COP” in early December, of which a carefully designed Green Climate Fund was to be a central piece, have become all but daunting.

A “Take-it or Leave-it” Draft Governing Document at the Final Hour

The “show-down” over the final draft governing document, which co-chairs Trevor Manuel from South Africa and Ketjil Lund from Norway introduced late afternoon on the third day of negotiations in Cape Town essentially as “take-it-or-leave-it” proposal, was preceded by two days of wrestling among the 40 TC members over the right wording and content elements to balance and bridge the essentially contradictory visions and desires for the Fund expressed by developing and developed countries. The meeting in Cape Town worked its way through two rounds of draft documents, namely an October 7th draft compiled by the leadership of the TC and offered at the beginning of the Cape Town meeting for comments, amendments and objections by the TC members, and a second round of redrafted documents, introduced in sections at the third day of the meeting. Early on it had become clear that the main sticky points hindering a wide agreement on a draft instrument continued to be the ones that had been laid out in detail by TC members in the previous three meetings (see in particular the Böll summary report of the third meeting in Geneva in mid-September). Those clearly insurmountable differences included: 1) the objectives, principles and mission of the Fund; 2) its relationship with the COP; 3) the legal personality of the Fund; and 4) the role of the private sector in the Fund.

Developing countries throughout the TC process had elaborated on their vision of a GCF close to US$ 100 billion annually by 2020, financed at its core with new and additional, predictable and adequate public contributions by developed countries fulfilling their "common but differentiated responsibilities" under the UNFCCC, which would allow developing countries simplified direct access to funding based on recipient country-preferences in a Fund with its own legal personality and strong accountability ties to the COP. In contrast, developed countries sketched out the outlines of a GCF with very reduced links to the COP and the UNFCCC, in which limited public finance was primarily utilized to catalyze and leverage private sector investments to form the core of the sums needed for transforming economic development in developing countries into ambitious low-emission pathways with measurable and verifiable results on which financing should be based.

While it is unclear if more negotiating time on a concrete draft instrument would have been able to bridge those differences, as the United States suggested in asking essentially for a fifth TC meeting, in hindsight is seems likely that the TC leadership of three co-chairs and two vice-chairs managing the text drafting process during the last TC meeting (from South Africa, Norway, Mexico, Singapore and Australia) might have underestimated the Committee members' intent and the time needed to engage in concrete and detailed text negotiations, assuming instead they would be able to reach agreement on a more generally worded communiqué-type document. It is also not quite clear if TC members clearly understood the chairs' intention in introducing the final text to not allow for further changes or another round of negotiations. In fact, the reaction of a number of speakers from both developed and developing countries had made clear that the reservations to certain parts of the governing instrument document were quite numerous from both developed and developing countries' side – even before the United States and Saudi Arabia voiced their categorical disapproval of the text and blocked a consensus, albeit for very different reasons.

Consensus Denied – Fundamental Objections by the United States and Saudi Arabia

The "red flags" that the United States had put up throughout the TC process in a negotiating position that did not seem to move or advance were basically the same the US negotiator listed as obstacles to the US agreeing to the draft governing instrument and needing further work, chief among them the relationship of the Fund to the COP, its legal personality, and the role of the private sector in the Fund. The United States objected for example specifically to the mention of "the principles and provisions of the Convention" as the guiding principles of the Fund as "overly broad" (para. 3), the endorsement of a GCF host country by the COP (para. 22), the consideration by the COP of a process to select the permanent trustee for the GCF (para 15.h. of the main report), and any COP involvement in the termination of the Fund (para.72). Paragraphs 7 and 8 dealing with legal personality of the Fund (although lacking in outlining a clear process of how to achieve juridical status) were likewise considered unacceptable, with the US restating its earlier opposition that "form needs to follow function" and that it was therefore premature to note, what form of juridical status the Fund would need (with the implication that ultimately the status needed could also be derived through an existing international entity like the World Bank; a clear no-go from developing country side). On the private sector, while the text referenced a private sector facility with the ability to "directly and indirectly finance private sector mitigation and adaptation facilities" (para.41), a bitter pill for most developing countries to swallow, the US felt nevertheless that operational modalities were to heavily tilted in favor of direct access for recipient countries, thus in the view of the Americans limiting the opportunities for private sector activities to engage in transformation activities by bypassing country-ownership too strongly. The restriction of financial inputs to the Fund to those of developed countries (para. 29) as well as to an initial establishment of only two thematic funding windows for adaptation and mitigation (para. 37) was also listed by the US as points needing further negotiations, "so that we would be able to support the process."

While those substantive objections are no doubt real ones for the United States, it is more likely that the USA wanted to keep a negotiation chip for the COP 17 in not giving away their agreement to a Green Climate Fund too prematurely. Without a concrete American finance pledge on the table and absent a strong own commitment on emissions reductions to compel emerging market economies to make themselves concrete emissions reductions concessions, the US yes to the design of the GCF is their only concrete offer for Durban. Ironic, though, that the USA– insisting on delinking the GCF from the COP with respect to governance and accountability – proved unwilling to separate progress in the TC from the broader UNFCCC negotiations.

Saudi Arabia for its part stated as its main objections to the draft governing instrument the failure of the document to include the priorities of developing countries, chief among them the question of the financial inputs to the Funds (paras. 29 and 30), which should be stipulating public sources from developed countries as core of the GCF financing with private sector investments playing only a supplementary role in the financing of needed climate action. Saudi Arabia complained also that its call for the inclusion of language on response measures (including for example the costs for the diversification of the economies of oil-producing nations such as Saudi Arabia) were ignored in the document – a request that put the demands of oil-rich countries such as Saudi Arabia on a par with the urgent financing needs of Small Island Developing States (SIDS) and Least Developed Countries (LCDs). Saudi Arabia as member of the G77 negotiating group within the TC had already succeeded in including a reference to financially support technology development and transfer, including for carbon capture and storage (CCS) as the only explicitly named technology into the paragraph on country eligibility to access GCF funding (para. 35). Both Germany and Barbados later asked for that reference to CCS to be deleted. In contrast to the United States, which had urged further negotiations, Saudi Arabia voiced its belief that additional deliberations would not be able to resolve the remaining issues and asked sending the report to the COP as a non-consensus document.

Disagreements Flagged by other TC Members

In presenting the draft governing instrument, Co-Chair Trevor Manuel had pointed out its compromise nature, indicating that if members could not agree on the document, then the GCF would not be starting its work next year. He urged member countries to be brief and succinct in stating their objections, pointing out the time constraint in needing to bring the meeting to a close. Most developing and developed countries alike in their remarks expressed their appreciation for the efforts of the chairs in doing a "good job" (Pakistan) by presenting a "highly balanced" (South Korea), "well balanced" (Burkina Faso) or "strong and balanced" (India) document, with which they were "overall pretty happy" (Gabon), in which the "basic ingredients" (United Kingdom) for a successful fund were covered and which provided a "very good basis for going forward" (China), even if countries individually felt "not a whirl of affection" (Democratic Republic of Congo) for the document, or even "a little unhappy" (Brazil) with the text, recognizing that it presented "not a perfect document" (Barbados), but at least did "not disappoint our own constituencies" (Samoa). They had nevertheless a number of objections and reservations, hoping that in a dynamic, non-static Fund there might be room for improvements (Zambia) and further clarifications (Egypt) .

Objectives and Guiding Principles

In the discussion in earlier TC meetings, developed country members had attempted to introduce wording to capture a high level of ambition for the Fund by utilizing the notion of "transformational change". However, it became clear that with an accepted definition of what transformational change describes missing, the term itself was too contentious to be acceptable to most developing countries. Instead the draft governing instruments refers now to the "paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change" (para.2). While most TC members expressed satisfaction with the wording utilized, drawing on draft language provided by the AOSIS countries in the TC, both China and the Philippines suggested minor modifications. China, in pointing to the language used in the Cancun Agreements, asked that the objectives section should refer to "low-carbon development strategies or plans in the context of sustainable development." The Philippines demanded a strengthening of the language from "limit or reduce" to "prevent and control". Several speakers, including Bangladesh and Zambia, had highlighted in an earlier version of the introductory first paragraphs the absence of any reference to equity considerations guiding the Fund operations in conjunction with efficiency and effectiveness considerations. The final version of the draft instruments reflected the suggestion of several developed and developing countries to replace a reference to the role of the Fund in leveraging climate finance with "catalyze" (para. 3).

Financial Inputs

In addition to the United States, both South Korea and Germany objected to the restriction of financial inputs to the Fund to developed countries, pointing out recent major changes in the distribution of wealth in the world, including among private sector entities in emerging market economies (para. 29). Brazil on the other hand complained that a reference to a multi-year replenishment process for the Fund, which was contained in an earlier text version, was deleted from the compromise document – essentially making financial contributions to the Fund a completely voluntary, uncoordinated and unscheduled activity of individual contributor countries.

Relationship COP and Fund

Like the United States, the UK red-lined a provision suggestion that the selection of the host country of the Fund by the Board would have to be endorsed by the COP (para.22). The UK was also asking for further clarification on the suggested guidance provided by the COP in selecting the permanent trustee of the Fund, after the three year interim arrangement with the World Bank has ended (para. 15.h. main document). The Philippines specifically were concerned about the lack of a reference to an open and transparent process for the selection of the permanent trustee by the Board, which in their view should be confirmed by the Board. Like the Philippines, several other developing countries, including Egypt, Brazil, Burkina Faso and Zambia pointed out the weakness of the relationship of the Fund with the COP as codified in the governing instrument and urged improvements. The document as it currently stands does not include several of the accountability provisions that many developed countries had hoped for, including COP endorsements for the Fund's Board members (para. 11), for the selection of the Executive Director of the Fund by the Board (para. 20) or for the selection of the head of the Independent Evaluation Unit by the Board (para.60). Developing countries, as voiced by Egypt, China, Zambia, Pakistan and Nicaragua, were also worried about unchecked decision-making powers by the Board, for example its ability under current wording to "develop procedures for adopting decisions in the event all efforts at reaching consensus have been exhausted" (para.14).

Legal Personality

While the draft governing instrument provides for the GCF to eventually have a legal personality (paras. 7 and 8), the language does specify neither the method nor a time-line for seeking the desired juridical status, a shortcoming which was pointed out by South Korea, Ethiopia and Gabon. Developing countries had repeatedly stressed their intention to have full legal personality conferred to the GCF as quickly as possible, a prerequisite for the Fund to engage in legal agreements with both recipient countries and private sector entities. In contrast, several developed countries, including France, Germany and the UK urged caution in moving forward with the legal status in the absence of a clear understanding of the Fund's intended functions and financing instruments. They disputed the view expressed by developing countries that the COP would be able to confer legal personality to the GCF similarly to the experience of the Montreal Protocol Fund. More likely is that a future host country for the GCF – apparently Switzerland, Germany, Singapore and South Korea have expressed some interest – could be selected also with a view of how quickly it could confer legal status under its domestic law to the new Fund.

Funding Windows

Under the draft governing instrument, a thematic funding window approach is suggested for the GCF, with initially only windows for adaptation and mitigation (para. 37), although according to the document the GCF Board retains the authority to "add, modify, and remove additional windows and substructures/facilities as appropriate" (para. 39). Zambia on behalf of the LDCs worried about safeguarding the adaptation window and asked that any modification of windows by the Board would have to be subjected to COP approval. Germany voiced the disappointment of several countries (including Belize and the Democratic Republic of Congo) who had hoped for the inclusion of a window for reducing emissions from deforestation and forest degradation and for supporting forest conservation efforts in developing countries (REDD +).

Private Sector Facility

Like Saudi Arabia, China, Egypt, Nicaragua, Gabon, Brazil and India also objected formally to the establishment of a private sector facility in the Fund with direct and indirect financing for private sector activities (para. 41), even if they in contrast to Saudi Arabia were willing to go along with the proposal for consensus' sake. China raised the possibility of establishing windows for capacity building and technology transfer in return for its acceptance of a private sector facility; currently the text provides only for "adequate resources for capacity building and technology development and transfer" (para. 38). Concerns of developing countries centered around the possibility of the private sector facility acting as a "fund within the fund" with the Board having the ability to operationalize the facility with different rules, including access modalities, from the rest of the Fund (para.44), not unlike the International Finance Corporation, which has different rules and procedures, including safeguard provisions, from other World Bank sub-entities. In order to avoid this situation, Egypt suggested establishing an outright private sector window instead. Developing countries, including India, Brazil and Nicaragua, also felt that in a country-driven approach private sector activities in recipient countries should not be able to bypass country authorities and would have to be approved by National Designating Entities (para.46). The Netherlands pointed out the current inconsistency between the direct funding possibility for private sector activities (para. 41) and the mandate to access funding resources through implementing entities accredited by the Board (para. 45), indicating the need for clarification. Nicaragua and Pakistan both suggested a strengthening of the language supporting private sector involvement from developing countries, especially SIDS and LDCs (instead of the current reference to "in developing countries" and "in SIDS and LDCs" in para. 43). Gabon worried that without a minimum allocation floor for SIDS, LDCs and Africa (allowed for under para 52), the private sector could be in active competition with these countries for GCF funding allocation.

Coherence and Country Ownership

India, Brazil and the Philippines objected to the notion that the Fund Board, not national entities, would ensure the coherence in programming at the national level through appropriate mechanisms (para.34). They pointed out that likewise it should be country-led domestic entities, such as the National Designated Authorities (NDA) which should ensure funding provided by the GCF is utilized for project and programmatic approaches in accordance with national climate change strategies and plans (para. 36). Egypt and Nicaragua also stressed that national designated authorities, far from being only consulted by the Fund Board about funding proposals for consideration prior to submission to the Fund, should in fact approve such funding proposals (para. 46).

Some Civil Society Concerns and Wins

Civil society observers to the TC process found themselves like most TC member countries deeply ambivalent about the text of the governing instrument for the GCF, which is now forwarded as non-consensus TC document to the COP 17 for consideration and approval. They continue to agonize about whether to live with the text as is or to fight for improvement during renegotiation at the COP should the package text be re-opened – a strategy that carries the risk of losing some if not all of the current wins for civil society.

Active Observers on the GCF Board

Among the wins for international civil society advocates was the inclusion of two civil society representatives, one each from developing and developed countries, as non-voting active observers in Board decision-making (para.16) giving them the opportunity to take the floor and suggest agenda items; likewise, two private sector representatives are to be included as well. Although this falls short of civil society proposals, which would have preferred to see the inclusion of a representative of a project- or program-affected community in recipient countries on the Board, it is an improvement over existing climate funds under the UNFCCC's financial mechanism and replicates "best practice" experience of the World Bank's Climate Investment Funds (CIFs). Several developing countries had opposed such an observer role for private sector and civil society, pointing out that their inclusion in the Board set-up would go beyond the Cancun mandate and afford non-governmental groups better representation on the Board than many observer countries and international organizations.

Stakeholder Participation and Safeguards

Civil society observers to the TC also were able to get explicit reference to "private sector actors, civil society organizations, vulnerable groups, women and indigenous peoples" as the stakeholders, whose input and participation the Fund Board will promote in the design, development and implementation of the strategies and activities to be financed by the Fund (para. 71). However, the final governing instrument saw a weakening of the language on environmental and social safeguards, where "best practice" standards to be agreed and adopted by the GCF Board only "shall" be applied (para. 65), with an earlier reference to relevant international conventions deleted in the final text. Several developing countries, led by Brazil, had been worried that safeguards, as well as a reference to the promotion of "environmental, social, economic and development co-benefits" included in the objectives of the Fund (para. 3) could be used as conditionalities to restrict developing countries access to the Fund.

Accountability Mechanisms

Likewise, while the document lists accountability mechanisms, namely an information disclosure policy to be developed by the Board (para. 67) and an independent redress mechanism to receive complaints from affected people in recipient countries (para. 69), both strong civil society asks throughout the TC process, there is no reference to the GCF's future disclosure policy as being in line with internationally recognized norms on access to information, or the ability of the redress mechanism to halt funding or implementation of projects and programs in case of violations.

Financial Inputs and Allocation

Civil society observers had demanded a strong commitment on financial inputs for the funds largely in line with developing countries, asking for a minimum of 50 percent of Fund allocations to be devoted to adaptation to deal with the structural underfunding of adaptation needs in the existing climate finance architecture, demanding the prohibition of earmarking by contributor countries and asking for a strong replenishment or assessed contribution process that would have provided the core of the GCF funding in form of public developed country contributions, while allowing for innovative public sources such as levies and taxes on financial transaction or transport fuels to add to the ongoing Fund capitalization in the near future. None of these demands were included in the final text proposal for the governing instrument. In fact, the text refers not even to innovative public finance sources, but only to "alternative sources" (para. 30). With long-term financing needs and sources a part of the negotiation package in Durban, it will be crucial – should the GCF governing instrument text be re-opened – to secure some strong reference to public finance contributions in a multi-year replenishment process.

Gender Considerations in the GCF

Civil society advocates were successful – no small accomplishment – in including several relevant references to gender in the governing instrument for the Fund. If retained in a possible renegotiation of the text during COP 17, this would make the GCF the first dedicated climate fund to include gender considerations from the very outset, setting a new best practice example over existing climate financing instruments, which have only begun several years into their operations to integrate some gender language retroactively. Currently, gender references are included in the objectives and principles of the Funds, its governance and institutional arrangements, its operational modalities, as well as in the section on stakeholder input and participation. In its guiding principles, the Fund is asked to maximize the impact of its funding for adaptation and mitigation, while "taking a gender-sensitive approach." (para. 3). In the selection of Board members for the Fund, relevant skills and experience are stressed, "with due consideration given to gender balance" (para. 11). Likewise, the staff selection of the independent Fund secretariat will be merit-based and transparent, "taking into account geographical and gender balance" (para. 21). Introducing the section on operational modalities, the Fund is asked to encourage "the involvement of relevant stakeholders including vulnerable groups and addressing gender aspects (para.31). Lastly, the Board is required to develop mechanisms to promote the input and participation of stakeholders, including women in the design, development and implementation of Fund strategies and activities (para. 71). While the inclusion of gender language in itself does not guarantee a gender-equitable GCF, it nevertheless represents a first important step towards gender-responsive climate financing, an ambition to be kept and reinforced in the COP17.

The Next Steps

The report of the TC to the COP, including the draft governing instrument for the GCF contained in Annex I, is being sent as non-consensus documents to the COP 17 for "its consideration and approval" (para. 14, main document). It will depend largely on how successfully the South African presidency can manage the COP process whether the draft governing instrument is opened up to deal with the numerous objections by both developing and developed countries in the former TC – and potentially new ones coming to the discourse from non-TC Parties – or if the draft governing instrument can be kept closed as a "package of gives and takes", for example in a separate contact group. Some expert observers suggest that in such a contact group setting the support of the United States to the draft governing instrument text might be forthcoming towards the end of the second COP negotiation week, depending on progress in other areas of the negotiations. This would be, at present, the best case scenario. In this case, COP 17 – rather than re-design the Fund's governing instrument – could focus on getting the Fund up and running as early as possible by simply taking note of the report of the TC and by approving the governing instrument for the GCF in its present form. The COP 17 would then move ahead in requesting that the UNFCCC Executive Secretary invites regional groups and constituencies to nominate the GCF Board members. It could invite UNFCCC Parties to submit their applications to host the Fund as well as ask for voluntary contributions for the start-up of the GCF necessary to support the work of the new GCF Board throughout 2012 and possibly 2013 to further develop GCF operational procedures and guidelines. With luck, political savvy by the COP presidency and a feeling of shared responsibility in the spirit of multilateralism among the TC members and the UNFCCC Parties, the GCF – despite the sub-optimal outcome of the TC process – could then be just a year or two away from making its first funding decision.

Liane Schalatek *is Associate Director of the Heinrich Böll Foundation North America. This report was written based on intensive notes taken and conversations conducted while participating as a civil society observer in the fourth TC meeting in Cape Town, September 16-18, 2011.*

Contact: Liane.Schalatek@us.boell.org