

Views of the United States on the New Climate Fund

Intervention by US Special Envoy Todd Stern at Geneva Dialogue on Climate Finance (2 September 2010) –

with appended comments by Benito Müller.

Contents

US INTERVENTION	1
I. Finance in the context of a package	1
II. The challenge of the Green Fund	2
III. Process for establishing the Fund	2
Step 1 — COP decision	2
Step 2 — Finance experts design the framework document.....	2
Step 3 – MOU agreed between COP and Fund	3
IV. Fund Governance.....	4
APPENDIX.....	5
The Working Group Process.....	5
Envisaged Governance of the Fund	5
The Global Fund model	6
Board Composition	6
Board Functions	6
Conclusion	7

US Intervention

I. FINANCE IN THE CONTEXT OF A PACKAGE

- [1] Thank you very much for the opportunity to share our views today.¹
- [2] I am going to speak to our vision of the process for establishing a Green Fund.
- [3] But first I want to make a point that may be obvious but is worth emphasizing.
- [4] The three core finance issues in the negotiations—fast start finance, the long-term goal of mobilizing \$100 billion, and the new Fund – are all elements of the Copenhagen Accord and were part of the balanced agreement there that included mitigation and transparency for both Annex 1 and non-Annex 1 parties.
- [5] We have supported moving forward on fast start finance unconditionally. On the other two issues, however, our support will depend on whether the balanced provisions of the Accord are successfully brought into an LCA outcome.

¹ Note that the numbering in square brackets has been added here for ease of cross-referencing.

II. THE CHALLENGE OF THE GREEN FUND

- [1] Turning specifically to the Green Fund: I want to focus on two things: how this fund could be established, and how it could be governed.
- [2] First, let me stress that we fully agree with developing countries who emphasize the importance of designing the new Fund to disburse money efficiently, i.e. quickly and with streamlined administrative procedures. This should be a goal for all countries – both those who have contributed money and want to see it spent without delay, and those who need the resources for mitigation and adaptation.
- [3] Before getting to specifics, I want to stress one point: in terms of both scale and scope, nothing like this Fund has been attempted before, either in the UNFCCC context or elsewhere.
- [4] Certainly it's too early to speculate about the size of this Fund – because that very much depends on how it's designed. We do expect that it will many times larger than either the GEF or the Adaptation Fund – orders of magnitude larger, in fact.
- [5] In any case, the fund is an important initiative which will draw significant attention from finance ministers and heads of state.
- [6] Therefore, we should consider next steps very carefully. It would be a mistake to automatically assume that most steps related to creating this Fund must occur in Bonn.
- [7] The legitimacy the UNFCCC confers is certainly important, and we have been clear that we envision this fund as being accountable to the COP.
- [8] But hopefully we all agree that our most important goal is a good end product: a fund that attracts the maximum size of contributions from a maximum number of countries, and is capable of delivering finance in a timely, effective, and responsible way.

III. PROCESS FOR ESTABLISHING THE FUND

- [1] Let me then turn to our vision for establishing the Fund, which we believe should proceed in three steps.

Step 1 — COP decision

- [2] Step 1 should be a COP decision, consistent with the Accord, specifying:
 - [i] that a new fund will be established as an operating entity
 - [ii] the basic composition and criteria for the Board
 - [iii] the identity of the Trustee
 - [iv] the thematic areas to be covered, like mitigation and adaptation.

- [3] This COP decision provides the framework for proceeding to step 2.

Step 2 — Finance experts design the framework document

- [4] Step 2 involves getting into the technical details of fund design.
- [5] Drawing on other successful examples I'll describe in a moment, all interested countries would convene in a series of meetings to develop a framework document for

the Fund, setting forth key issues including funding criteria, financial instruments, role of the secretariat, access modalities, and so on.

- [6] This process should be fully inclusive, and should be led by finance ministries.
- [7] At the final meeting of the working group, all participating countries would select the Board, which then approves the framework document.
- [8] In developing this approach, we looked at processes used to establish other large, successful international funds. Here are a few examples.
 - [i] The Global Fund to Fight AIDS, Tuberculosis, and Malaria is one of the world's largest mission funds, with over \$19 billion raised. It was set up in the manner I've described. After UNGA and the G8 called for its establishment, interested countries formed a Working Group hosted by Belgium and chaired by Uganda. Over a series of meetings, this group developed the fund framework. After Board composition was agreed, country constituencies elected the first Board. The process took less than a year.
 - [ii] The Climate Investment Funds are the largest climate finance channel today, with over \$2 billion delivered by donors. In this case, a group of developed and developing countries and the multilateral development banks held a series of meetings to design and establish the CIFs. This also took less than a year.
 - [iii] In the case of the GEF finance experts from many countries convened to restructure the existing GEF pilot program and negotiated the GEF instrument. The GEF subsequently negotiated an MOU with the COP.
- [9] Some people cite the Adaptation Fund under Kyoto— but it's small, lacks a track record, and is funded primarily by a CDM levy. Also, it took eight years to operationalize the Adaptation Fund. It also took four years of UNFCCC negotiations to establish the Special Climate Change Fund and the Least Developed Countries Fund.
- [10] This is why we propose a multidisciplinary group of experts led by finance ministries.
- [11] Who could convene such a process? One or more countries would take the initiative to convene and host the meetings – as Belgium and Uganda did for the Global Fund for HIV/AIDS.

Step 3 – MOU agreed between COP and Fund

- [12] So we've now had Step 1 (COP decision) and Step 2 (detailed design process).
- [13] At this point, the "operating entity" is established — it has a Board, and a framework document. Now it's ready to connect to formalize its arrangements with the COP.
- [14] The Convention says the COP provides policy guidance to operating entities, which are accountable for following it. This implies a contractual relationship, which is why the GEF and the COP agreed an MOU governing that relationship.
- [15] For the new Fund, therefore, Step 3 should be the development and agreement of an MOU between the COP and the Fund's Board, setting out the terms of "guidance and accountability."
- [16] This three-step approach allows the COP to set basic parameters at the beginning (Step 1), as well as to formalize the terms of guidance and accountability once the

Fund is established (Step 3). And in between, it allows finance experts to design the details and set up the operating entity (Step 2).

- [17] We feel strongly that this approach is most likely to set up an effective and attractive Fund in a timely way.

IV. FUND GOVERNANCE

- [1] Finally, I want to address just a couple of issues of fund governance.
- [2] I've already touched on the role of the COP and the Board – and the need to be consistent with the Convention, which specifies this division of labor pretty clearly.
- [3] The Fund's board would be subject to the COP's policy guidance. However, the Board would be the executive authority of the Fund.
- [4] Consistent with the Accord, the Fund's Board would have equal representation of developed and developing countries. These groups of countries would determine among themselves their appropriate representation on the Board. This is how it works in many multilateral funds, including the GEF and the CIFs. The COP would not have a role in selecting Board members.
- [5] Board members should have a combination of financial, development, and environmental expertise. Terms of reference for board members could be developed with COP involvement.
- [6] The identity of the Trustee is an important issue for all contributor countries. In our view, the World Bank may be the only institution with the fiduciary standards, safeguards, and experience to serve as Trustee for this fund, just as it does for the GEF, the Adaptation Fund, and the CIFs.
- [7] However, although the World Bank's role as Trustee is important to us, we are not pushing a "Fund run by the World Bank," as some have interpreted. The Board should run the Fund, and the Fund should be subject to the COP's policy guidance. The Fund's Board should not report to the World Bank.
- [8] I hope this has clarified U.S. views on the Fund. We look forward to hearing the views of others on these important questions.

Appendix

I think this Intervention is extremely useful in clarifying a number of key issues about the US three-step process of establishing the new climate fund, and their view of how that fund should be operated. The aim of this Appendix is to have a closer look at the proposed process and governance structure to highlight some of the potential consequences, and – if possible – suggest a way forward in areas that turn out to be problematic. (Numbers in square brackets cross refer to paragraphs in the Intervention.)

A. THE WORKING GROUP PROCESS

I could not agree more with the sentiment expressed in [II.6] that we should consider next steps very carefully, but I would also caution that the good end product referred to in [II.8] could be achieved in the absence of a general buy-in of the ‘methods of production’

In this context, it may be useful to summarize a couple of key points of the proposed 3-Step Working Group process for setting up the new Fund (as elaborated in Section III).

I don’t think Step 1 (‘COP decision’) is problematic, my concerns arise primarily in the context of Step 2, according to which a Working Group of ‘all interested countries’[III.5] would be convened in a ‘fully inclusive’ [III.6] manner ‘to develop a framework document for the Fund, setting forth key issues including *funding criteria, financial instruments, role of the secretariat, access modalities*, and so on.’[III.5]

There can be no doubt that such a framework document will need to be developed, and that it will be of considerable normative, not to say political significance. The question is whether the proposed Working Group (WG) process will have the legitimacy for such a framework to be the foundation of the sort of ‘good end product’ referred to earlier.

For one, it seems clear that, given the levels of funding which the new fund is meant to attract, practically all developing countries would want to be included in the deliberations. Thus, in order to avoid a completely unmanageable 100+ member Working Group, there will have to be some “inclusion through representation”. The question then becomes: who chooses the representatives. One option would be: the convener(s). Yet, given the experience with the Friends of the Chair group in Copenhagen, it seems unlikely that this method would generally be seen as legitimate (with the effect of a rather uncertain Step 3 in the process). The alternative would be to opt for a process of self-representation, but there again it is difficult to see how one could gain the consensus enabling buy-in of the COP which is required for Step 3 if this process of selecting representatives were to take place outside the COP.

B. ENVISAGED GOVERNANCE OF THE FUND

According to the Intervention, the WG would draft what might be called the Instrument of the new fund. At its final meeting, the WG would select the Fund Board [III.7], which would become the ‘executive authority’ of the fund. [IV.3]. However, in a sense the Board would also become the ‘governing body’ of the Fund. For one, it would be the Board which is meant

to approve the Instrument, and consequently would presumably have the power to amend that Instrument.

What is not quite clear in the Intervention is the procedure of replacing Board members once the Board has been established. Apart from stipulating an equal representation between developing and developed countries, the intervention simply mentions that ‘countries would determine among themselves their appropriate representation on the Board’ (at the same time excluding the COP from having any role in selecting Board members).[IV.4]

In that context it may be interesting to have a look at one of the examples which the Intervention refers to as exemplary, namely The Global Fund to Fight AIDS, Tuberculosis, and Malaria.²

C. THE GLOBAL FUND MODEL

The Global Fund to Fight Aids, Tuberculosis & Malaria (GF) is a non-profit foundation registered under Swiss law and as such operating under the supervision of the Swiss Federal Supervisory Board for Foundations. It is governed by the GF Bylaws, last amended on 5 May 2009.³

Board Composition

Art 7.2 specifies that the Board is composed of 20 voting (one-member-one-vote) and 6 non voting members. The voting members represent constituencies:

- Seven representatives from ***developing countries***, one representative based on each of the six World Health Organization (“WHO”) regions and one additional representative from Africa.
- Eight representatives from ***donors***.
- Five representatives from ***civil society*** and the ***private sector*** (one representative of a non-governmental organization (“NGO”) from a developing country, one representative of an NGO from a developed country, one representative of the private sector, one representative of a private foundation, and one representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria).

Board Functions

Art. 7.4 of the Bylaws defines the functions of the Foundation Board (Board). The Board is the ***supreme governing body*** of the GF. As such, the Board

- appoints its own members (according to Art. 7.2);
- sets the GF policies and strategies;
- set operational guidelines, work plans and budgets for the Secretariat and the Technical Review Panel;
- approves the annual report of the Foundation.

At the same time, the Board is also tasked with what would generally be seen as ***executive functions***, namely to

² To be sure, the GF is referred to in the Intervention only in the context of the process by which it was established. In the context of governance, the only examples referred to are the GEF and the CIFs.

³ http://www.theglobalfund.org/documents/TGF_Bylaws_en.pdf

- make funding decisions;
- select and, if necessary, replace the Executive Director (other Secretariat appointments will be made by the Executive Director under procedures approved by the Foundation Board);
- set criteria for membership of, and appoint, members of the Technical Review Panel and other advisory groups as appropriate;
- validate eligibility criteria for projects;
- establish a framework for monitoring and periodic independent evaluation of performance and financial accountability of activities supported by the Foundation;
- establish conflict of interest policies for the Foundation Board, the Technical Review Panel, the Secretariat staff and others as appropriate;
- consider, approve, and monitor cooperative arrangements or agreements with other organizations and institutions;
- coordinate with outside agencies;
- advocate for the Foundation and mobilize resources;
- establish Foundation Board committees as appropriate;
- establish criteria for participation and rules of procedure for the Partnership Forum.

Comment

The governance structure of the Global Fund is certainly worth considering, particularly with respect to the representation of non-government actors as voting members of the Board. However, giving the ‘legislative’ and the ‘executive’ functions of the fund to one and the same body is, I believe, highly problematic, particularly if the context of operations is as politically charged as that of climate change finance. The new fund will have to be managed by a Board of professionals (‘executive directors’). But management and setting the operational rules and strategies is not the same.

D. CONCLUSION

There are, I believe, good reasons to separate the normative/political and the executive functions of the new fund and to entrust them to different bodies. In the terminology of the Intervention, this could be translated as the need to establish the Working Group in a permanent capacity, as the funds ‘governing body’.

And yet, this set-up would still not be unproblematic: it would in all likelihood face the same double governance issues that have plagued the relationship of the COP with the existing operating entity.

I believe the idea of a Finance Standing Committee (FSC), which was also presented at the Geneva Dialogue,⁴ could well provide the solution, not only in operationalising the new fund, but also in supporting the COP in providing the normative guidance for the new fund.

For one, the representatives delegated by the member Parties of this Standing Committee are meant to have a certain profile. Indeed the FSC is precisely meant to be what the Working Group is characterized as in the Intervention, namely a ‘multidisciplinary group of experts led by finance ministries’. The only difference is that its members (countries, not individuals!) are selected by the COP, thus ensuring the buy-in that is needed to ensure a productive relationship of the Fund with the COP.

⁴ http://www.eurocapacity.org/downloads/Presentation_Geneva_Dialogue.pdf

Communities (NGOs representative of the Communities Living with the Diseases)

Developed Country NGO

Developing Country NGO

Private Foundations

Private Sector