

Time to roll up the sleeves – even higher! Longer-term climate finance after Cancun

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Introduction¹

The recent UN Climate Change Conference in Cancun may turn out to be a watershed in the international climate change regime. It has given the multilateral approach under the UN Framework Convention on Climate Change (UNFCCC) a new lease of life. Although the Kyoto Protocol obituaries remain as exaggerated as when it entered into force,² it is still alive.

As far as longer-term climate finance is concerned, the key outcome of Cancun is the decision by the Conference of the Parties (COP) in the Cancun LCA Agreement:³

- (i) to establish a *Green Climate Fund (GCF)*
- (ii) that a *significant share of new multilateral funding for adaptation* should flow through this fund
- (iii) to establish a *Standing Committee* under the COP to assist it in exercising its functions with respect to the UNFCCC financial mechanism.
- (iv) Everybody involved in bringing about this outcome deserved a good year-end holiday but now it is time to roll up the sleeves even higher than last year, in order to carry out the substantial amount of work needed to implement these decisions by the next session of the COP's next session in December 2011 in Durban, South Africa. The aim of this article is to look at some of the main issues facing this implementation.

Establishing a Green Climate Fund

An article published in *Outreach*⁴ on the second day of Cancun put forward a compromise proposal on how to establish the new climate fund. This was an attempt to combine the G77+China position with the procedure used to establish the Global Fund (GF) which formed the basis of the US position. The article focused on two areas, namely the procedure of convening what was referred to as a 'transitional expert panel' (TEP) on the one hand, and the working methods of the drafting body on the other.

Procedure: who convenes whom, and how?

The compromise TEP was to *include a balanced and equitable representation from the COP, expanded by representatives of non-government sectors* (eg from private sector, multilateral development banks, civil society, academia). As it turns out, the GCF will be designed by a *Transitional Committee (TC)* with 15 members from developed and 25 members from developing country parties "the latter representing relevant UN groups,⁵ as well as Small Island Developing States (SIDS) and the Least Developed Countries (LDC) Group. Assuming these groups select their representatives, the TC is likely to have the legitimacy required for COP buy-in and to incorporate what has been referred to as the 'political expertise'⁶ to guide the drafting work towards the desired COP approval.

However, the TC fails to incorporate a critical lesson learned in establishing the GF, namely the importance of incorporating *all* relevant sectors in the drafting process. The agreement does mandate the TC to be 'open to observers', and to 'encourage input from all Parties and from relevant international organisations and observers'. Yet the actual drafting appears to be restricted to single-sector members of the TC and (probably) TC support staff.

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2 'Like a Masked Serial Killer in a Teenage Slasher Flick, the Kyoto Protocol Will Not Die!' *Pittsburgh Tribune-Review* (24 August 2004).

3 'Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention' (LCA) http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf.

4 B Müller, S Harmeling 'In the Footsteps of the Global Fund: How to Establish the New Climate Fund' COP 16 *Outreach* (30 November 2010) www.stakeholderforum.org/fileadmin/files/OUTREACH-02.pdf.

5 Africa, Asia, Group of Latin American and Caribbean States.

6 See, for example, B Müller 'What Expertise? On Who Should be Drafting the Framework Documents for a New Global Climate Fund' (November 2010) Oxford Energy and Environment Comment www.oxfordenergy.org/pdfs/comment_02_11_10.pdf.

The latter are to be seconded from ‘relevant United Nations agencies, international financial institutions, and multilateral development banks, along with the secretariat and the Global Environment Facility’, and judging from experience,⁷ could be directly involved, particularly in the crucial task of preparing the initial draft documents. It stands to reason, given the GF experience, that failure to involve other sectors in drafting the TC – including the preparation of initial drafts, and the inevitable work between meetings “ will not only reduce the efficiency of the process but enhance the risk of sub-optimal outcomes.⁸

It has been said about Cancun that ‘we cannot let the perfect be the enemy of the good’,⁹ but in this case we must not let the good be the enemy of the perfect either! The fact is that these other sectors can be directly involved in the drafting process, without infringing the strictures of the agreement. How? As mentioned above, the agreement allows observer involvement in the drafting process, both by participating in TC meetings and by providing input. The idea is simply to follow the original purpose of the Climate Investment Funds (CIF) to provide lessons for the UNFCCC processes by admitting *active observers*¹⁰ – selected by the relevant non-government constituencies “ who have the right to participate freely in all discussions and to propose agenda items (but cannot vote).

The fact that the TC is to be convened by the Executive Secretary of the UNFCCC has the added advantage of a ready-made selection mechanism: the UNFCCC Secretariat regularly invites the recognised UNFCCC NGO constituencies to nominate representatives to participate in the workshops they convene. All it takes to enable the TC to harness *all* the best available expertise – both inside and outside government¹¹ “ is to include the function of

‘active observers’ in the rules of TC procedure, and this should be strongly commended to whomever will be deciding on these rules.

Working methods: what to do and how to do it?

In addition to the multidisciplinary and multi-sectoral nature of the GF TWG (Technical Working Group) and the support of a dedicated technical support secretariat, the *Outreach* article lists the following two key factors which are vital to the success of the TWG:

- broad and early stakeholder consultations, including regional meetings with governments as well as consultation meetings with specific stakeholder constituencies (such as civil society, private sector, academia)
- establishment of specific drafting groups, such as on fiduciary management and governance, which continue the work of the TWG between meetings.

Given the UNFCCC accredited observer constituencies, the former should be easily replicable with the support of the UNFCCC Secretariat. As to the latter, it is clear that in the limited time until Durban the workload prescribed in the ‘Terms of reference for the design of the Green Climate Fund’¹² can only be carried out through a division of labour and continuous drafting. Moreover, it is important that TC members (and active observers) be involved from the very beginning in the drafting process. Both can only be done in (small) document-specific drafting groups.¹³

Leadership: who?

The reform of the financial mechanism launched in Cancun is likely to have as profound an impact as the launch of the Bretton Woods system some 60 years ago. This is why it is

7 In the case of the Adaptation Fund, for example, all initial drafts of the founding documents were provided by the GEF Secretariat (see www.adaptation-fund.org/1stAFB).

8 This is particularly true for the envisaged design of, say, ‘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’, or of ‘mechanisms to ensure stakeholder input and participation’.

9 UN Secretary General Ban Ki-moon (as quoted in *USA Today* 8 December 2010) echoing Voltaire’s ‘le mieux est l’ennemi du bien’ (*La Béguéule: Conte moral* 1772).

10 ‘Recognizing that it is important to ensure good linkages between the Climate Investment Funds and key partners in order to promote sound and transparent decision making, efficient use of resources and complementarily with other sources of financing, the CIF Trust Fund Committees and Sub-Committees have invited different stakeholders to identify representatives to participate as active observers in its meetings’ www.climateinvestmentfunds.org/cif/Observers.

11 *Note bene* The admission of active observers in no way denigrates or disparages the government officials who serve on the TC or, for that matter, the staff of MDBs and the other international entities seconded to support this process. Indeed, it is not meant to imply that some of them could not have direct experience of relevant private sector

activities, or knowledge of the relevant academic literature. The point is simply that these types of non-government perspectives need to be represented in the design process of the new fund, in the same way in which direct knowledge of the governance of existing multilateral funds – largely the preserve of government officials – needs to be represented. Clearly it would be asking too much to require such non-government experience in the profile of TC members, which is why the process requires active observers to guarantee the presence of this complementary experience in the work of the TC. Nor is the inclusion of non-government expertise through active observers meant to undermine the government prerogative of political decision-making. The point is that the TC is not a negotiating, but an expert body, which is to prepare draft documents for approval by the COP. As such, the TC has no decision power, and consequently is in no position to undermine the decision-making prerogative of the political representatives in the COP.

12 Annex III of the COP 16 LCA Outcome.

13 The technical support team of the TC is there to provide technical support, not to do ‘core business’ ie draft the relevant documents. The task of producing the initial drafts of the documents in particular should not be delegated to the support team.

important to get it right. In particular, it is important to find a person who can provide genuine hands-on leadership to this process. In the context of establishing the GCF, this can really only be the chair of the TC. Therefore, the chair of the TC must be a mutually respected person who not only knows how to guide UN processes, but also has firsthand experience of the task at hand.

Identifying sources for the GCF, particularly for adaptation

The *Outreach* article concludes with the proposition that ‘there is very little appetite in the developing world for establishing yet another placebo fund’. Feedback at Cancun indicates that this sentiment is shared by many delegates from developed countries, as reflected in the COP consensus ‘that a significant share of new multilateral funding for adaptation should flow through the Green Climate Fund’.¹⁴ The question is ‘merely’, how this funding is going to be raised, particularly in the near-term?

In the Agreement, the COP reaffirms that funding ‘may come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources’,¹⁵ and takes note of the report of the High-level Advisory Group on Climate Change Financing (AGF).¹⁶ It is no coincidence that the agreement has nothing more to say on how the new fund is to be sourced. Identifying sources of funding for the GCF will be the toughest problem in the forthcoming finance negotiations and must be resolved quickly, for it is clear that without some start-up funding package, the GCF will arrive stillborn in Durban. So how can we secure *adequate start-up funding* by Durban, in the current context of record budget cuts in the developed world?

The Texas Tea Party, for one, seems to have seen some writing on the wall: ‘A process was established to design the \$100 billion Green Climate Fund ... The design will probably be for a tax on international shipping and aviation’.¹⁷ Over two years ago, the LDC Group put forward a proposal for precisely such a levy on international air travel to provide a significant core funding stream for adaptation. Although it was not actually evaluated in the AGF Report, this proposal deserves some special attention, because it is probably the only innovative financing scheme that could actually fly *in time*, for the simple reason that it already exists (albeit under a different name)!

The Leading Group

The Leading Group on Innovative Financing for Development (Leading Group) is a platform where countries, international organisations, and representatives of civil society can engage in discussion, information sharing and promotion of innovative financing mechanisms. It was launched in Paris 2006 with the original aim of:

- contributing to the emergence and circulation of projects for innovative development financing mechanisms
- promoting the idea of solidarity levies among our partners and international forums
- developing the international air-ticket solidarity levy which is being implemented by a first group of countries with a view to extending it to other countries according to their possibilities
- reviewing methods of using revenues generated by the international air-ticket solidarity levy for coordinated and long-term action in the health and development sectors

The Leading Group currently has 55 member countries and is led by a rotating, six-month presidency. Apart from the International Solidarity Levy on Air Tickets, the Leading Group also covers Advance Market Commitments to address shortcomings in the pharmaceutical market with regard to the poorest countries, and the International Finance Facility for Immunisation (IFFIm), set up as a large-scale pre-financing mechanism based on a system of guaranteed bonds.

Source: www.leadinggroup.org

The Leading Group levy as instrument for start-up adaptation funding?

The *International Air Passenger Adaptation Levy* (IAPAL), as conceived in the LDC proposal,¹⁸ is a mandatory global version of the solidarity levy for HIV/AIDS and Malaria established in 2006 in France and subsequently put under the aegis of the *Leading Group on Innovative Financing for Development* (see table) as *International Solidarity Levy on Air Tickets*.¹⁹ Under IAPAL, all international air travel would be charged a nominal fee “US\$6 per economy trip and \$62 per business/first class trip – which would currently raise an estimated \$8–10bn annually.

An ecbi Policy Brief, published in 2009,²⁰ discusses a number of questions arising from the proposal. The most pertinent in the present context is ‘Why not make the levy voluntary?’. The point is not to make the levy optional for passengers but simply to follow the Leading Group solidarity

14 LCA para 100.

15 LCA para 99; emphasis added.

16 LCA para 101.

17 Cathie Adams ‘UN Agrees on a Process to Design the Global Taxing Scheme’ (12 December 2010) <http://texasgovvote.com/global-warming/un-agrees-process-design-global-taxing-scheme-002231>.

18 See eg B Müller *International Air Passenger Adaptation Levy (IAPAL): Thirteen Questions and Answers* (ecbi Policy Brief April 2009) www.eurocapacity.org/downloads/ecbi_Brief_-_IAPAL_13_Q&As.pdf.

19 Leading Group On Innovative Financing for Development ‘International Solidarity Levy on Air Tickets’ www.leadinggroup.org/rubrique177.html.

20 Müller *International Air Passenger Adaptation Levy* (n 18).

levy and give countries the choice to opt-in, as it were, to a *voluntary IAPAL start-up pilot* “ie the choice to apply the levy on international air travel from their territory in order to raise adaptation funding for the GCF. While it stands to reason that such a move would reduce the above-mentioned revenue potential, this should not be problematic, as it is unlikely that the GCF would be able to process anything like the figures mentioned above at the outset.

The chief advantage of this would be the availability of a *ready-made collection tool* – no need for negotiations, be that under ICAO or anywhere else.²¹ Indeed, over the last couple of years, the Leading Group has started to look at innovative financing for climate change. The 2008 Conakry Declaration, for example, stated under the heading ‘Climate change control and innovative financing mechanisms’: ‘The first victims of global warming are the least developed countries (LDCs), namely the ones that are less accountable for CO₂ emissions’.²² However, the focus was solely on ‘(carbon) market-based’ instruments as innovative sources for climate change finance.²³ The same was true a year later at an informal Leading Group meeting on the same topic in Copenhagen during COP 15.

There is nothing fundamentally wrong with looking for innovative adaptation financing through carbon credit auctioning. However, any such system will take time to establish, certainly longer than a year, by which time the instrument of the GCF is meant to be approved.

Given the aversion of many parties to establishing yet another ‘placebo fund’, it is difficult to see how the GCF Instrument could be adopted on the basis of funding that depends on ongoing (ICAO) negotiations. And, given the current economic climate, it is not certain that sufficient start-up funding could be raised through sovereign contributions alone. Consequently, it is essential that the International Solidarity Levy on Air Tickets be at least temporarily made available to countries to raise adaptation finance for the GCF if it is to have a viable chance of being fully established in Durban.

21 This does not mean that such negotiations are not needed in the longer term, be that to introduce the full IAPAL, or to introduce a carbon permit auctioning regime for bunker fuels, with which to raise the required funding. It only means that no such negotiations are necessary to provide innovative start-up funding for the Green Climate Fund.

22 Conakry Declaration www.leadinggroup.org/IMG/pdf_Declaration_of_Conakry.pdf p 8.

23 ‘The development of market mechanisms (CO₂ credits, mechanisms of clean development etc. ...) initiated by the European Union and expected to extend itself at world level, provides an opportunity to generate new resources to address that injustice and to finance actions for adaptation to climate change. Germany, within the framework of the Leading Group’s Programme, has already decided to allocate part of the revenues from auctioning of CO₂ credits.’

That said, it is important not to misread this proposal: negotiations on how exactly the GCF is to be sourced predictably after the start-up phase must be a top priority in the run-up to Durban. The point here is simply to identify an option for fast-start innovative financing as a potential stop-gap measure, which means that domestic fiscal problems cease to be a credible excuse for providing significant start-up funding for the new GCF.

Establishing a COP Standing Committee (on finance)

The idea of a *Standing Committee* (SC) ‘to assist the Conference of the Parties in exercising its functions with respect to the financial mechanism of the Convention’²⁴ can be traced back to a meeting in Oxford in August 2010.²⁵ It is based on the concept of a parliamentary standing committee used to support Parliament in exercising its oversight functions with respect to the executive branch.

The Agreement envisages the SC as assisting the COP in four areas, namely:

- improving coherence and coordination in the delivery of climate change financing
- mobilising financial resources
- measuring, reporting, and verifying (MRV) support provided to developing country parties
- rationalising the financial mechanism.

The first three reflect functions already envisaged in the AWG-LCA Tianjin Negotiating Text.²⁶ However, a number of functions suggested in that text did not make it into the Agreements, such as:²⁷

- *assessing the needs* for international finance to support activities to address climate change, and studying the contribution of the potential sources of revenue, including alternative sources of finance, towards meeting these needs²⁸
- recommending 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. Reviewing the distribution of finance and identifying financing gaps.²⁹

24 LCA para 112.

25 2010 ecbi Oxford Fellowships www.eurocapacity.org/public/fellow-oxford.shtml.

26 FCCC/AWGLCA/2010/14 pp 39–40. <http://unfccc.int/resource/docs/2010/awglca12/eng/14.pdf>.

27 These listings have been slightly edited to improve comprehension.

28 FCCC/AWGLCA/2010/14 ch III paras 14(c) and (d).

29 *ibid* para 14(d).

However, the biggest lacuna in the agreement concerning the SC is the lack of any reference as to how it is to relate to the operating entities of the financial mechanism, and, for that matter, to Convention bodies other than the COP (eg the SBI). In particular, the following three relevant functions listed in the Tianjin Text are not reflected in the Agreement:

- *recommending to operating entities modalities* that provide simplified, improved, effective, and equitable access to financial resources in a timely manner, including direct access
- *establishing eligibility criteria* for climate finance, and *guidelines* related to transparency of decision making regarding financing, access to financing, and reporting requirements for the operating entities
- *providing guidance to, and ensuring accountability* (to the Conference of the Parties) *of all operating entities* of the financial mechanism.

The absence of a role for the SC in providing guidance to operating entities and ensuring their accountability is particularly problematic. It was the realisation that the COP's function of overseeing the operating entities of the financial mechanism – expressed in terms of giving guidance and ensuring accountability – can only be carried out satisfactorily with the help of a smaller support body, that led to the idea of the SC in the first instance. This is

one issue that the COP will have to consider in further defining the roles and functions of this SC, as mandated in the Agreement. Indeed, it will be difficult not to conclude that Parties who do not wish the SC to support the COP in this oversight function are not really interested in improved oversight.

Another potential problem is the lack of a time frame for the process of establishing this SC. This is particularly striking when compared with the situation of the Adaptation Committee, where parties were invited to submit their 'views on the composition of, and modalities and procedures for, the Adaptation Committee, including on proposed linkages with other relevant institutional arrangements'³⁰ by 21 February 2011, with a request to the AWG-LCA to formulate the relevant documents for adoption in Durban.³¹ This may not be unintentional, but it is important for those who are not really interested in this issue to bear in mind that many countries – particularly in the developing world – regard the establishment of this SC on a par with the establishment of the GCF. Moreover, given the remit of the SC with respect to the MRV of support (see above), it is difficult to see how the work programme³² for implementing decisions to develop 'common reporting formats, methodologies for finance', to 'enhance guidelines for the review of information in national communications with respect to ... provision of financial, technology and capacity-building support'³³ could legitimately be carried out in the absence of the SC.

30 LCA para 21.

31 *ibid* para 23.

32 *ibid* para 36.

33 *ibid* paras 41 and 42.