

Climate Fund's design Committee wrestles with process problems at first meeting

The first meeting of the Transitional Committee to design the Green Climate Fund held in Mexico City from 28-29 April 2011 wrestled mainly with process issues surrounding the election of officers, the agenda and work plan, rules of procedure, selection of staff to the Technical Support Unit and avoiding a conflict of interest.

Bonn, 6 June (Meena Raman) – The first meeting of the Transitional Committee (TC) to design the Green Climate Fund (GCF) established under the United Nations Framework Convention on Climate Change (UNFCCC) kicked off on Thursday, 28 April in Mexico City, following protracted discussions behind closed doors over election of officers of the meeting.

On the first day of the meeting, Parties also had an intense exchange of views on the agenda of the meeting, with the African Group proposing an alternative agenda and the Alliance of Small Island States asking for an amendment to the agenda proposed by the Executive Secretary of the UNFCCC. While the AOSIS proposal was accepted, the African Group proposal was not accepted despite several proposals by some countries to take into account the issues raised by the Group and there being no objections.

There was also a lively exchange on the purpose, principles and scope of the GCF. Many countries, both developed and developing, stressed the need for a new financial architecture in climate financing which brings transformational changes in developing countries in addressing climate change and that also enables developing countries to have direct access to funds.

On the second and final day of the meeting on Friday, 29 April, developing countries on the TC raised concerns that there could be a conflict of interest if World Bank personnel are seconded to the Technical Support Unit to help in the design of the GCF.

(See below for further details on day two of the meeting. A technical workshop for the TC was also held in Bonn from 30 May to 1 June and further updates will follow in this regard.)

The first day of the meeting in Mexico City on 29 April was supposed to begin at 10 am but got delayed for more than 6 hours, as informal consultations among TC

members took place behind closed doors and was closed to observers.

According to sources, Mexico, the host of the TC meeting (and which was also the President of the 16th Meeting of the UNFCCC Conference of Parties) insisted on wanting a key role as Chair or co-chair of the process. Its representative on the TC is its Minister of Finance and Public Credit, Mr. Ernesto Cordero Arroyo.

Several Parties had wanted two co-chairs to steer the TC meeting - one from an Annex 1 (developed) country and another from a non-Annex 1 country, as is commonly the practice under the UNFCCC.

Mexico, though an OECD country, is a non-Annex 1 Party under the UNFCCC but is not a member of the G77 and China.

It was also learnt that South Africa (which will host the next meeting of the Conference of Parties in Durban later this year) had wanted its representative, Mr. Trevor Manuel, the Minister in the Presidency in charge of the National Planning Commission, to be also considered as Chair or co-chair of the process. Mr. Manuel was however not present at the meeting in Mexico City.

This would have meant two co-chairs from non-Annex 1 Parties, which was not acceptable to some developed countries.

The Asian Group had also proposed a representative from Asia to be considered as a possible co-chair, given that none of the existing subsidiary bodies under the UNFCCC and the Kyoto Protocol are led by a member from the Group.

Following intense consultations, a compromise was finally reached with Parties agreeing to the TC being led by three co-chairs, comprised of Mexico, South Africa

and Norway, with the last represented by its State Secretary from the Ministry of Finance, Mr. Kjetil Lund.

The delegations of the Philippines and Pakistan, during the formal session of the TC, expressed the extreme flexibility shown by the Asian Group in the discussions in agreeing to the compromise reached.

The Philippines said that its understanding was that the role and mandate of the co-chairs will emanate from the TC members and also that there would be roles for other TC members to also drive the process forward.

Ms. Christiana Figueres, the Executive Secretary of the UNFCCC declared open the meeting in the late afternoon, and explained that at Cancun (last meeting of the COP in 2010), Parties had agreed that the GCF would be designed by a Transitional Committee comprised of 40 members, with 15 members from developed countries and 25 members from developing countries.

She stressed that the task of the TC was to design the GCF in time for its approval at the South African COP meeting in Durban and the Fund spelt a new era for climate change financing. Figueres also said that the GCF would benefit from a robust, transparent and flexible design to deploy climate funding both for adaptation and mitigation.

Once the Parties confirmed the election of the 3 co-chairs, Mexican Finance Minister Cordero conducted the meeting. He said that the work of the TC would be conducted in an inclusive and transparent manner to achieve satisfactory results.

When it came to the consideration of the agenda for approval of Parties, Samoa, speaking for AOSIS, wanted an additional agenda item to consider the “purpose, principles and scope” of the GCF. The proposal by AOSIS was accepted by members of the TC as an exchange of views on this matter. An interesting discussion followed under this agenda item.

Egypt submitted the proposal of the African Group for an alternative agenda for the consideration of Parties. The African Group proposal was more detailed than that provided by the Executive Secretary. Egypt said that its proposal was for a work programme that was taken from the operative paragraphs of the Cancun decision and would encompass the work needed for the lifetime of the TC. The agenda provided by the Executive Secretary included the following items: working arrangements for the TC; work plan of the TC and other matters.

The African Group proposal included agenda items on procedural matters (relating to rules of procedure for the TC meetings; designation of a secretariat of the TC; budget for the TC meetings, secretariat etc; division of work of the elected TC officers); 2011 work programme of the TC (including legal arrangements, institutional arrangements, financial matters relating to resources of

the GCF, modalities of contributions to the Fund etc, role and responsibilities of the Fund’s trustee, advisory and technical expertise of the Board, complementarity between the Fund’s activities and those of other funding mechanisms and institutions); monitoring and evaluation of the operation of the GCF and modalities for involving stakeholders in the Fund operations.

In the Mexican co-chair Cordero’s response to the African Group proposal, while saying that the comments of Group were well taken, he said that Parties had to be practical to advance discussions. Cordero said that the agenda proposed by the Executive Secretary was general enough to capture the suggestions of the African Group and these issues could be added when the specific agenda items were being addressed.

Several delegations expressed support for consideration of the African Group proposal, including Nicaragua, the Philippines, Bangladesh, India and Singapore and no objections were raised by any TC member. Singapore in fact suggested that the African Group’s listing of issues could be an annex to the agenda with the understanding that it was an indicative list of issues though not exhaustive, as the general agenda by the Executive Secretary did not give the assurance that all the issues were on the table.

Despite these interventions, Cordero insisted that the agenda be adopted as proposed by the Executive Secretary, with the additional amendment made to include the AOSIS proposal. Cordero said that there was no consensus to accept the African Group proposal. He said this despite the fact that there were no objections to considering them.

In fact, as shown above, several delegations had supported the listing of the issues for consideration of the TC.

The TC members then adopted the agenda as proposed by the Mexican co-chair. The meeting proceeded to deal with the agenda item on an exchange of views between Parties on the purpose, principles and scope of the GCF.

Brazil said that the fund should be governed by the principles of the Convention. Among them was the primary responsibility of the developed countries to provide financial resources to developing countries. There was a need to balance the resources for mitigation and adaptation. Brazil also said that there was need to promote through democratic governance the developing countries’ sense of ownership of the fund.

Samoa, speaking for **AOSIS** said that the purpose of the Fund was to enhance implementation of the Convention and its ultimate objective by scaling up the delivery of new, additional, predictable and adequate multilateral climate financing to catalyze transformational changes in developing countries in accordance with their sustainable development

priorities, as well as to support adaptation actions. It said that the Fund functions under the guidance of, and is accountable to, the COP and supports projects, programmes, policies and other activities in developing countries related to mitigation, adaptation, capacity-building, technology development and transfer. It also stressed the need for the Fund to operate as a financial instrument with implementation responsibilities, including direct access.

The **United Kingdom** said that it was important to ask what the objective of the Fund was and how to ensure value for money. It also asked the question of the purpose of the Fund and the problem it was trying to fix in terms of the existing architecture. Some of the problems it identified included the issue of fragmentation of the funding, the responsiveness and ability to respond at a speed and scale to deliver finance to where it needs to go quickly and to address direct access. It also stressed the need to leverage private sector financing.

The **United States** said that it was useful to have a short statement of purpose which related to the need to address the challenge of addressing climate change through deploying financial instruments that leverage private sector investment. It said that there was need to refer back to what was decided to Cancun and not to re-litigate what was decided but to focus on the mechanics of the GCF.

Pakistan said that the principles and provisions of the Convention must apply. It stressed the importance of the Fund having an international legal personality, which was capable of getting into contracts with member states and operationalising direct access of the funds to developing countries. It said that there was need for a transformation and a new business model that also ensured sufficiency of funds, predictability and delivery.

Nicaragua referred to the Cancun decision and said that Parties had agreed to scale up new and adequate funding, taking into account the urgent and immediate needs of developing countries. It also stressed that direct access was important to operationalising the GCF. There was also need to operationalise the need to derive funds from a wide variety of sources, including alternative sources. It said that there was need to operationalise the GCF to be accountable to, and function under the authority of, the COP and to enable thematic funding windows. It said that the work of the Board of the Fund should be Party-driven.

China said that the objective of the GCF was to establish support to developing countries to combat climate change. The mandate of the TC is from the Cancun decision. On the principles of the GCF, as an operating entity of the financial mechanism of the Convention, it should be consistent with principles of the Convention, the Kyoto Protocol and the Bali Action Plan (adopted at the COP meeting in 2007 as the

mandate for the ongoing negotiations). It also stressed the need for easy access with no conditionality.

Australia said that there was need for private sector involvement and the funding should be results-based, with strong country ownership and that enable direct access. The GCF should be flexible to a range of finances and financial instruments. It should also be based on robust fiduciary standards and effective use of funds.

Germany said that there was need to assist developing countries for a low carbon path which cannot be business-as-usual and must ensure transformational change in energy, land use and forestry management. The purpose must be to build resilience to existing impacts in all areas. It said that there was need to build on existing efforts and experience, and merge these into better design and framework.

The **Philippines** said that there was need to learn from lessons from the past. It referred to the G77 and China proposal for establishing a new financial mechanism which was underpinned by the principles of the Convention relating to equity, common but differentiated responsibility, operate under the authority and guidance of the COP, have equitable and balanced representation in the governance and be transparent and ensure direct access of funding for developing countries. It should be flexible and free from conditionality and be predictable as well as adequate.

France said that the GCF should help scale up climate financing and support the effort of existing institutions. There was need to address the missing links and cover all thematic windows and streamline and reduce fragmentation.

Japan stressed the need to operationalise the Cancun decision and said that the GCF provided an historic and unique opportunity to address climate change and can be a game-changer. It said that there was need to stock-take on why existing funds cannot bring transformational change and also address fragmentation and the governance structure. It asked if Parties were respecting ownership and if the voices of stakeholders were being heard. It said that there was need to address the missing links and to address why there were problems and how to address them.

Saudi Arabia also stressed the need to adhere to the principles of the Convention and for the Fund to be comprehensive in serving the needs of all developing countries, including in addressing response measures and the need for diversification.

Spain said that the objective of the GCF should be to resolve the current problems of the financial architecture and that there was need for a new financial architecture. There was need for a new approach to adaptation and mitigation financing and to consider the needs of developing countries. The added value in

governance was in having new actors; in identifying new sources and new financial instruments. There was need for huge amounts of money for transformation.

Denmark asked what it would take the Fund to be a success and said that Parties needed to look at this when comparing with other institutions. There was need to deliver results at speed. There was also need for national institutions to ensure direct access (to funding).

Barbados said that it would like to see transformational change and that the GCF was established after experiencing frustration. It hoped that the GCF would be transformational and ambitious.

India reiterated that the GCF should be demonstrably new and additional. The funds should be primarily in the form of grants. It said that it must be recognized that the overriding priority for developing countries is to overcome poverty and that there are trade-offs for developing countries in the short-term in addressing climate change. It stressed that there should be no conditionality for financing and that the institutional mechanism should be innovative with a new architecture and governance.

Singapore said that the GCF must make a difference in achieving the ultimate objective of the Convention in stabilizing greenhouse gases. It must also be a model of efficiency in terms of administration with no wastage.

World Bank's conflict of interest in Green Fund design?

Developing countries on the Transitional Committee for the design of the GFC raised concerns that there could be a conflict of interest if World Bank personnel are seconded to the Technical Support Unit to help in the design of the GCF.

This issue of the conflict of interest was raised during the second day of the meeting of the Transitional Committee on Friday, 29 April in Mexico City, by developing countries including the Philippines, Nicaragua and India, when the working arrangements for the TC and the role of the TSU were discussed.

They said that since the World Bank has been invited to serve as the interim trustee for the GCF under the December 2010 Cancun decision [of the Ad-hoc Working Group on Long-term Cooperative Action under the UNFCCC], staff connected to the World Bank could not be involved in providing consultancy services related to the design of the GCF which is about its governance.

Nicaragua said that this would be contrary to international fiduciary standards, citing the case of Arthur Andersen, the audit firm involved in the Enron Corporation scandal in the United States, where as auditors of Enron, Arthur Andersen was also involved in providing consultancy services to the company and this was found to be a conflict of interest.

Nicaragua said that it is not internationally acceptable for the World Bank to be involved both in a consultancy function (in designing the GCF) as well as in being a trustee of the GCF. This would be a violation of international fiduciary standards, as there is an apparent conflict of interest to be involved in role of designing the GCF that relates to the governance structure of the GCF when the World Bank is a trustee of the GCF. In such a situation, any World Bank personnel should excuse themselves from such a role as in the designing of the GCF, said Nicaragua.

Philippines referred to the "sunset-clause" under the World Bank's Strategic Climate Fund (SCF) that provides for the cessation of the SCF once a new financial architecture becomes effective under the UNFCCC.

It referred to the 'sunset clause' of the Climate Investment Funds (CIF) of the World Bank as contained in paragraphs 57 and 58 of the Strategic Climate Fund (SCF) where the World Bank as the trustee of the SCF is involved in decisions about the continuity of the SCF. (The SCF is one of the two funds of the CIF, the other being the Clean Technology Fund).

The Philippines said that anybody who is connected with the CIF and the SCF would be in a conflict of interest situation if they were also involved in the design of the GCF. It also referred to the 'Arthur Anderson syndrome' (in the Enron scandal).

(Paragraphs 57 and 58 of the Strategic Climate Fund of the World Bank's "sunset-clause" are as follows:

"57. Recognizing that the establishment of the trust fund is not to prejudice the on-going UNFCCC deliberations regarding the future of the climate change regime, including its financial architecture, the SCF will take necessary steps to conclude its operations once a new financial architecture is effective. Specifically, the Trustee will not enter into any new agreement with donors for contributions to the trust fund once the agreement is effective. The Trust Fund Committee will decide the date on which it will cease making allocations from the outstanding balance of the Trust Fund.

58. Notwithstanding the above paragraph, if the outcome of the UNFCCC negotiations so indicates, the Trust Fund Committee, with the consent of the Trustee, may take necessary steps to continue the operations of the SCF, with modifications as appropriate.")

In response to this, the **United States** did not agree that there was a conflict of interest involved and said that any determination relating to the sunset-clause as to whether the CIF was to continue or not would be done by the Governing Body of the CIF and not the trustee (the World Bank).

(Paragraph 58 above clearly shows that the consent of the World Bank as trustee of the SCF is necessary in determining the continuation of its operations.)

Germany also disagreed that there was a conflict of interest and said that there was no need to overstate the issue as the Technical Support Unit was not an independent consulting body but is working through the Transitional Committee and therefore, it did not have independent judgment. On the sunset-clause of the CIF, it said that Bank worked under the direction of governments and did not have an independent role. It was the governments that decided what the priorities are.

Sweden agreed that the issue of conflict of interest must be taken seriously and there was need to ensure impartiality on the part of members of the Technical Support Unit.

Nicaragua in response to the interventions by developed countries, said that it could not agree that there was an abdication of a situation of conflict of interest just because the Technical Support Unit functioned under the Transitional Committee. It said that if Parties were applying international fiduciary standards, then a consultancy function (of persons in the Technical Support Unit) could not be combined with a fiduciary function of being a trustee of the GCF (as in the case of the World Bank).

India said that the issue was not just of whether a conflict of interest existed in reality but whether there was also a perception of such a conflict and this must be prevented.

The Cancun decision requested the UNFCCC secretariat to make arrangements enabling relevant United Nations agencies, international financial institutions and multilateral development banks, to second staff to support the work of the Transitional Committee for the design phase of the GCF.

Pursuant to this, the Executive Secretary, Ms. Christiana Figueres, informed Parties that arrangements have been made for establishing the Technical Support Unit, which is to be operational immediately after the initial meeting of the Unit. The Unit consists of the secretary to the Transitional Committee and a substantive team drawn from the UNFCCC secretariat staff and staff seconded from relevant organizations to support the work of the Committee.

In an information note by the UNFCCC secretariat, Parties were informed that a fund design specialist will be seconded from a multilateral development bank (MDB) and will inter alia, coordinate the preparation of design options papers, including assessment of governance options.

Philippines requested the deletion from the information note any reference to a fund design specialist being seconded from an MDB.

Another issue of controversy that arose during the meeting related to how decisions are to be made by the

Transitional Committee and what the meaning of consensus was.

Developing countries led by the **Philippines** and supported by **China, Saudi Arabia, India, Egypt, Pakistan, Nicaragua and the Democratic Republic of Congo (DRC)** wanted the existing United Nations rules of procedure to continue and for consensus to mean that no single member has made a formal objection to adopting conclusions. They did not want a repeat of what happened in Cancun where despite the express objection by Bolivia, decisions were adopted.

The **DRC** and **Pakistan** also said that since the Transitional Committee was a body created by the Conference of Parties (COP), the rules of procedure of the COP applied, and this could be modified as necessary but there was need for explicit consensus in this regard which must be clearly reflected under the working arrangements of the Transitional Committee.

Developed countries such as the **United States, Spain** and **Canada** wanted a more flexible approach. The US said that it was possible to have "consensus voting" and that it was not appropriate to use the UNFCCC rules wholesale and there could be important modifications and Parties can look to the UNFCCC rules for guidance.

Spain said that there was need for flexibility on the consensus rule according to the work that was needed and would not support a strict definition of consensus.

Canada said that a hard rule on consensus could lead to "filibusters" (referring to tactics used in the US Congress to prevent a measure from being brought to vote).

Italy said that the TC was not a decision-making body and could provide options that can be brought to the decision-making bodies, while ensuring a transparent process.

A further matter that was controversial was in relation to a request by members of the Asian Group of the Transitional Committee to have a representative from the region to serve as Vice-Chair to the Committee, in addition to the three Co-Chairs that were agreed to through a compromise reached on the first day of the meeting on April 28 (see TWN Info. Service on Climate Change April 11/01 dated 30 April 2011 for a report of meeting held on 28 April).

The current 3 Co-Chairs are Mr. Enersto Cordero Arroyo of Mexico, Mr. Trevor Manuel of South-Africa and Mr. Kjetil Lund of Norway.

Saudi Arabia, speaking for the **Asian Group** said that that the Group had shown great flexibility on the issue of the election of the Co-Chairs. It said that the Group deserved a seat on the leadership of the Transitional Committee and would like to be assured that there was a place for it in the process as vice-chair.

Pakistan supported Saudi Arabia and said that at the time of the election of the 3 Co-Chairs of the TC, the issue of the vice-chair was not addressed and this did not mean that the position was precluded. It said that before the next Committee meeting, the Asian Group needed a chance to be represented.

Philippines said that when the Asian Group agreed to the suggestion for the 3 Co-Chairs, it was made clear several times that the Group would also have a role. The Asian Group wanted Singapore's Transitional Committee representative, Ambassador Burhan Gafoor to be considered as vice-chair of the Committee.

The request by the Asian Group was supported by the **Democratic Republic of Congo** for the **African Group, Nicaragua, El Salvador and Brazil**.

The developed countries, led by the US, did not want the discussion on the matter to continue.

The **US** suggested that the matter be left to the Co-Chairs to decide when and how additional vice-chairs can be allowed and that this issue be brought to the next meeting.

The **UK** and **Australia** echoed the US suggestion and the Mexican Minister of Finance Mr. Cordero who was chairing the Transitional Committee meeting, said that discussion on this issue should be resumed at the next meeting of the Committee.

An interesting exchange also followed on the kind of experts needed for the Technical Support Unit with the Alliance of Small Island States (AOSIS) setting out principles for its staffing and operation, including a call for an additional expert familiar with the specific constraints faced by developing countries in accessing climate finance.

Barbados, speaking for **AOSIS**, said that among the principles that should operate for the staffing and operations of the Technical Support Unit should be included the guarantee of independence and impartiality of each member; it should be composed of experts and specialists who have demonstrated and recognized technical expertise in the relevant field of work; the selection of experts and specialists should be made through a transparent and fair process; no dominance or over-representation of one single institution in the Unit; avoidance of conflict of interest; and the need for geographical balance in the representation of regional development banks.

Several developing countries including **Nicaragua** and the **Democratic Republic of Congo** also stressed the importance of the work of the TSU to be mandated by the TC. Nicaragua said that the TC should not be a "rubber-stamp" of the TSU.

The TC meeting also considered a revised discussion note prepared by the Co-Chairs which was entitled *'Revised draft work-plan for the TC (Transitional Committee)'* with a proposal for 4 work-streams on (1) scope, guiding principles and cross-cutting issues; (2) governance and institutional arrangements; (3) operational modalities; and (4) monitoring and evaluation.

Nicaragua said that the document was not a work-plan for the TC but was a proposal for work-streams. The co-chairs were requested by Parties to revise the document following inputs received during the meeting.

There was also disagreement between developed and developing countries over whether the Transitional Committee should address the roles and functions of the Standing Committee (SC).

Under the Cancun decision, Parties decided to establish the SC to assist the Conference of Parties in exercising its functions in relation to the financial mechanism in terms of improving coherence and coordination in the delivery of climate change financing etc.

Under work-stream 2, the Co-Chairs' note referred to the relationship between the Green Climate Fund and other bodies including the SC. The US wanted the reference to the SC to be removed as it said that the SC was yet to be established.

The Mexican Co-Chair agreed with the US that the SC had not been created.

The **Philippines, Pakistan, China** and **India** all insisted that the Cancun decision established the SC and that it was an integral part of the Transitional Committee process. India said that the Cancun decision established the SC but what remained to be done was for the SC to be operationalised. The Philippines opposed the removal of any reference to the SC as suggested by the US.

The Mexican Co-Chair also proposed that two facilitators facilitate each work-stream, with one from an Annex 1 country and one from a non-Annex 1 country. Work-stream 1 would be facilitated by Barbados and Spain; work-stream 2 by the Democratic Republic of Congo and Switzerland; work-stream 3 by Pakistan and Australia and work-stream 4 by Bangladesh and Sweden.

The UNFCCC Parties at the meeting also expressed support for workshops to learn the lessons from the (UNFCCC) Adaptation Fund as well as from other existing funds, including from beneficiaries of the funds.

The Parties also agreed that the second meeting of the two facilitators would be held in early July in Japan, while further meeting venues were offered by Switzerland (Geneva), Singapore and South Africa.