

Durban to decide fate of Green Climate Fund

The Transitional Committee, tasked by the COP to design the Green Climate Fund, could not adopt its report containing the draft instrument for the Fund by consensus following objections from the United States and Saudi Arabia at its final meeting held on 18 October in Cape Town. Many members of the TC had also expressed mixed reactions and concerns over the draft instrument. The non-consensus report has been transmitted to the COP for its consideration to take a decision. Following is a report of what transpired at the final meeting.

Durban, 28 November (Meena Raman) – In a night of drama at the meeting of the Transitional Committee to design the Green Climate Fund under the United Nations Framework Convention on Climate Change (UNFCCC) held in Cape Town, South Africa on 18 October, the United States withheld consensus to the adoption of the report of the Committee which was transmitted to the 17th meeting of the Conference of Parties (COP 17) to be held in Durban, South Africa in late November this year for its approval. Saudi Arabia also did not give its consent for the adoption of the report.

Despite several attempts by the co-chairs of the meeting and pleas by several countries in the final hours to persuade the US to not withhold consensus to the adoption of the report, the US remained firm in its position.

Several senior negotiators and observers in response to the US withholding of consensus, commented after the meeting along the corridors, that the US was not prepared to agree to a deal in Cape Town until the overall deal in Durban was done, as the GCF issue was a key “bargaining chip” in the negotiations in South Africa.

Germany, expressed frustration and disappointment and said that anything short of sending a report of the TC by consensus to COP 17 “is a failure and will likely result in not having the GCF this year or the next.”

Mr. Trevor Manuel of South Africa, who co-chaired the meeting with Mr. Ketjil Lund of Norway called the outcome “sub-optimal”.

A number of TC members both from developed and developing countries also expressed concerns over the governing instrument of the Green Climate Fund (GCF), which was appended as an annex to the report

of the TC, but they did not block consensus. It is learnt that had the US chosen to adopt the report with reservations and not block the consensus, some developing countries would have also put in their reservations.

The final decision was for the submission to COP 17 for its approval, of the report with the governing instrument in the annex without adoption, as it did not enjoy the consensus of all TC members.

The fourth and final meeting of the TC held from the afternoon of 16th to 18th October saw intense negotiations on the governing instrument of the GCF. The TC, which comprised of 40 members (15 members from developed countries and 25 members from developing countries), was mandated by the Cancun decision last year to design the GCF.

On the evening of the final day of the TC meeting at around close to 8 pm, TC members were presented with a draft report by the co-chairs. The draft report included recommendations of the TC to COP 17 in the main part of the report and the draft governing instrument for the GCF in an annex to the report.

Manuel, in presenting the draft report for adoption, said that the governing instrument document was a compromised document and invited members to give their general comments. Many TC members expressed their views including the US and Saudi Arabia.

At this session, the US expressed its concerns in some areas and wanted further work to be done. Among the issues raised included the relationship between the COP and the GCF. It referred to paragraph 15(h) of the main report which contained a recommendation by the TC to COP17 to “consider the process for selection of trustee of the GCF” and questioned the role of the COP in relation to the selection of the trustee. (This refers to the permanent trustee as in

Cancun, it was agreed that the World Bank would be invited to serve as the interim trustee. Throughout the Cape Town meeting, the US wanted the COP to have a very minimal role in relation to the GCF and wanted the Board of the GCF to have a greater role).

The US also referred to paragraph 22 of the governing instrument and said that this paragraph “undoes” the Cancun agreement and was a problem. (Paragraph 22 states that “The selection of the host country of the Fund will be an open and transparent process. The selection of the host country will be endorsed by the COP”. It also referred to paragraph 72 of the instrument and said that this paragraph also went beyond what was agreed to in Cancun as regards the involvement of the COP. (Paragraph 72 states that “Termination of the Fund will be approved by the COP based on a recommendation of the Board).

As regards the legal status of the GCF (as contained in paragraphs 7 and 8 of the instrument), the US said that the essential technical issues needed to be addressed. (Paragraph 7 states that “In order to operate effectively internationally, the Fund will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests”).

On the operational modalities, the US said that the provisions were too heavily weighted on direct access (by recipient countries to the Fund) and restricted the ability of private sector engagement in transformational activities. (The instrument in paragraph 41 provides that “The Fund will have a private sector facility that enables it to directly and indirectly finance private sector mitigation and adaptation activities at the national, regional and international levels”. Paragraph 42 states that “The operation of the facility will be consistent with a country-driven approach”).

Another key concern that the US had was with paragraph 29 of the instrument, which states that “The Fund will receive financial inputs from developed country Parties to the Convention.” The US said that this was a restriction of financial inputs from only developed countries. (The US wanted developing countries to also contribute to the Fund). The US wanted further work to be done to complete the document.

Saudi Arabia said that it could not endorse the text on the governing instrument as the views of developing countries were not reflected and its reservations expressed during the negotiations were not taken into account. It said that its call for language on the impact of response measures was ignored. It expressed concern as regards paragraph 14 of the instrument on decision-making (which states that “Decisions of the Board will be taken by consensus of the Board members. The Board will develop procedures for

adopting decisions in the event all efforts at reaching consensus have been exhausted”). Saudi Arabia said that the language was inconsistent with the UNFCCC’s procedures on decisions by consensus. It was also concerned about paragraphs 29 and 30 of the instrument on financial inputs which did not reflect that contributions from public sources from developed countries is supposed to be the primary source of financing, while contributions from the private sector was supplementary. It was also concerned about references to “alternative sources” of funding and preferred the use of “innovative sources” instead.

When co-chair Manuel wanted to move the report for adoption, the US said that it took objection to the document moving forward as it wanted more work done and Saudi Arabia said the document did not enjoy consensus.

Brazil said that at least two members of the TC had shown reluctance to give consensus and suggested to the co-chairs that the only way to move forward was to send the document to the COP and say that there was no consensus.

Finally, following various attempts in finding a way forward, the TC members agreed to an amendment to paragraph 14 of the report which reads as follows: “The draft report was discussed at the fourth meeting of the TC in Cape Town, South Africa, and the text contained in Chapter III below was considered on 18 October 2011. It is submitted by the TC to COP 17 for its consideration and approval...”. This was agreed to by members. (The earlier version of this paragraph had the word “adopted” in place of “considered”).

The report also made the following recommendations in Chapter III to the COP that it (a) takes note of the report of the TC as mandated by decision 1/CP.16; (b) approve the governing instrument of the GCF contained in the annex of this report; (c) requests the Executive Secretary (of the UNFCCC) to invite regional groups and constituencies to nominate their Board members; (d) request the Executive Secretary of the UNFCCC to invite Parties to submit expressions of interest to host the GCF; (e) invite voluntary contributions for the start-up of the GCF; (f) request the UNFCCC Executive Secretary to set up an interim secretariat immediately after COP 17 to provide technical, administrative and logistical support to the Board, in particular in the preparation of materials for and organization of Board meetings until an independent secretariat of the GCF is fully operational. The interim secretariat should be composed of staff with the relevant expertise and be fully accountable to the Board and function under its guidance; (g) set the date for the first meeting of the

Board; and (h) consider the process for selection of trustee of the GCF.

Mixed reactions to Green Fund design

Members of the Transitional Committee (TC) of the Green Climate Fund (GCF) expressed mixed reactions and concerns over the design of the GCF.

Late evening of the final day of the TC meeting on 18 October, TC members were presented with a draft report by the co-chairs, Mr. Trevor Manuel of South Africa and Mr. Ketjil Lund of Norway.

The report included recommendations of the TC to COP 17, which was in the main part of the report and the governing instrument for the GCF, which was annexed to the report. The governing instrument sets out the design of the GCF.

Manuel, in presenting the draft report for adoption, said that the governing instrument document was a compromise document and invited members to give their general comments but called on them to be brief, repeatedly saying that the meeting room needed to be vacated to prepare for another function. While many countries took the floor to give their views, when Moroccan delegate Mr. Rachid Firadi raised his flag during the session, Manuel did not allow him to speak, saying that the list of speakers was closed and time was running out.

It was learnt from several developing country members of the TC that they were under the impression that changes to the document could be entertained and this was not a "take-it or leave-it" document. However, following the general comments, Manuel proposed the report with the annex to be adopted and it was then that delegates realized that there was no opportunity for further changes.

It was then that US and Saudi Arabia withheld consensus in the adoption of the report. It is learnt that had the US chosen to adopt the report with reservations and not block consensus, some developing countries would have also put in their reservations.

Among the issues of concern raised by developing countries were the limited role of the COP in relation to the GCF; the Fund's role in promoting coherence at the national level when this was the job of the national entities; the watering down of the role of the national designated authority (NDA) of the recipient countries in not approving all funding proposals; the private sector facility having direct access to the Fund for financing activities at the national level without the approval of the NDA; lack of clarity on the voting procedure to be adopted by the Board in decision-making in the event of no consensus among Board

members and leaving this to the Board to decide; the authority of the Board to remove or modify funding windows without the approval of the Parties and the absence of providing the procedure for the selection of the permanent trustee and leaving this to the COP to resolve.

Dr. Omar El-Arini of Egypt said that he would like the COP to confirm the selection of the GCF's Board members. (Paragraph 9 of the instrument does not provide any role for the COP in confirming or endorsing the composition of the Board, which was what many developing countries had called for.) He also wanted the appointment of the Executive Director of the secretariat to be confirmed by the COP. (Presently, this is not the case and it is the Board that appoints the ED and there is no role for the COP). He also wanted the selection of head of the evaluation unit to be confirmed by the COP. (There instrument does not provide for any role for the COP in this regard and leaves it to the Board to do the appointment).

El-Arini was also concerned that there was no provision for voting as regards decision-making by the Board. (The instrument in paragraph 14 states that "decisions of the Board will be taken by consensus of the Board members. The Board will develop procedures for adopting decisions in the event all efforts at reaching consensus have been exhausted." The earlier version of the instrument in this regard had provision for voting in the event effort at reaching consensus was exhausted. It provided that "...decisions will be taken by a two-thirds majority of the Board members present and voting, representing a two-thirds majority of Board members from developed country Parties and a two-thirds majority of Board members from developing country Parties. Developing country members of the TC had been concerned about a proposal by Japan which was supported by Germany for the voting procedure to be similar to that of the World Bank Board, the Climate Investment Funds and the Global Environment Facility (GEF) which is a weighted system of voting based on the contributions of countries to the Fund.)

On the issue of the national designated authority (NDA), he wanted the approval of the authority for all funding proposals before they are submitted to the Fund. (Paragraph 46 of the instrument provides that the NDA recommends to the Board on funding proposals in the context of national climate strategies and plans, but the NDA will only be consulted on "other funding proposals for consideration prior to submission to the Fund to ensure consistency with national climate strategies and plans).

In relation to the private sector facility, El-Arini preferred to have a window for the private sector instead of a facility. He also wanted to add further

recommendations by the TC to the COP as he said that this was missing in the instrument viz. (i) on the process to confer international juridical personality on the GCF and (ii) the procedure for the selection of the permanent trustee of the Fund.

Ms. Carol Mwape Zulu of Zambia on behalf of the **LDCs** said that in this process, members would not get all that they want and expressed satisfaction. She expressed concern over the power of the Board to modify or remove funding windows especially that for adaptation, adding that Parties should be consulted prior to any modification, removal or addition of funding windows. (Paragraph 37 of the instrument provides that the Fund will have windows for adaptation and mitigation and paragraph 39 provides that the Board will consider the need for additional windows and will have the authority to add, modify and remove additional windows and substructures/facilities as appropriate). Mwape also supported Egypt in relation to concerns over the NDA, which she said must approve all funding proposals.

Mr. Dipak Dasgupta of India said that there was need for further balance in the instrument as regards the national entities at the country level. In relation to paragraph 34, which provides that “the Fund will promote coherence in programming at the national level through appropriate mechanisms”, Dasgupta said that it is not the Fund, that promotes coherence at the country level but that was the job of the national authorities. He said that the same was the case with paragraph 36 in relation to “supporting programmatic approaches in accordance with climate change strategies and plans...” In relation to the “private sector facility that enables it to directly and indirectly finance private sector mitigation and adaptation activities...”, he said that this must be subject to the approval of the national entities. He also wanted the NDA role to be strengthened in approving funding proposals. India supported Egypt on the issue of decision-making by the Board (referring to the issue of voting).

Mr. Wu Jinkang of China said that the instrument was balanced in some areas but was less balanced in others. He referred to paragraphs 2 and 36 of the instrument where there were references to “low-emission development strategies and plans” and that China had insisted that the language must be consistent with the Cancun decision which refers to “low-carbon development strategies or plans in the context of sustainable development”.

On the issue of decision-making by the Board, he said the final text took a step backward, as he thought that there was agreement among members to have the

earlier language in the text referring to the need for a double majority in the event the Board did not have consensus. This issue was too important to leave to the Board and the principle of one-country one vote was important. If the Board could not reach agreement on this issue, the Fund would be in trouble.

On the funding windows, Wu said that there was no agreement to have a private sector facility and as a compromise and in the spirit of cooperation, he could support the facility if there were separate windows for capacity building and for technology transfer as this was important for developing countries. (The instrument does not provide for separate windows for capacity building and technology transfer but in paragraph 38, it provides that “the Board shall also ensure adequate resources for capacity building and technology development and transfer.”)

Ambassador Sergio Serra of Brazil said that he was unhappy with the instrument but recognized that it was big effort on the part of the co-chairs and vice-chairs in the preparation of the document. He pointed some areas of “unhappiness” where he said there was compromise. On the “legal personality”, he said there was no firm position reached. On some aspects of accountability between the COP and the Board, there was compromise (as Brazil and several other developing countries wanted the COP to play a role in the endorsement of Board members, in the selection of the head of the secretariat and the head of the evaluation unit). On the private sector facility, he said Brazil was very hesitant as regards this proposal and had compromised on that too. He also referred to reference to “low-emission development strategies and plans” and said that this was not the correct wording (in the Cancun decision) and the previous provision in the earlier text for a multi-year replenishment process for financial inputs “had gone down the drain”.

In the light of the compromises made, Serra, supported India and wanted changes to be made as regards paragraphs 34 and 36 of the instrument as it was unacceptable for the Fund to promote coherence at the national level as this was for the national governments to do so. He said that for the private sector to have direct access at the national level, the funding proposals must be approved by the NDA.

Mr. Jorge Ferrer of Nicaragua expressed concern that the private sector could have direct access to funding without the endorsement of the NDA. In relation to paragraph 43, he said that the private sector facility should support private sector involvement “from” and not “in” SIDs and LDCs. He was also concerned with paragraph 46 where the NDA will only be consulted on other funding proposals and not

to give its approval. He was also concerned that the Board has powers independent of the COP as for example in decision-making.

Ms. Bernarditas Mueller of the **Philippines** supported the views of developing countries and emphasized the weakness in the relationship between the COP and the Fund. She also had concerns over the weak language in relation to the NDA and stressed that it was the NDA that needs to be in control and not the Board. She also wanted provision on the procedure for the selection of the permanent trustee through an open and transparent process.

Mr. Farrukh Khan of Pakistan also drew attention to paragraph 43 in relation to the private sector facility, which should support activities to enable private sector involvement “from” developing countries and not “in” developing countries. In relation to the quorum for the meeting of the Board, he expressed preference for the earlier text that what was in the instrument. (Paragraph 15 of the instrument states that “a two-thirds majority of Board members must be present at a meeting to constitute a quorum”, while the earlier text provided for “a simple majority of Board members from developed country Parties and a simple majority of Board members from developing country Parties must be present at a meeting to constitute a quorum.”)

Mr. Idrissa Ouedraogo of **Burkina Faso** said that the GCF was very important and there should be no room for it to fail. He also stressed the need for COP endorsement of the Executive Director of the secretariat and the head of the evaluation unit. The representative from **Gabon** also expressed concern over whether the private sector should have direct access to the Fund for activities in developing countries when they should work with the national entities at the country level.

Mr. Tosi Mpanu-Mpanu of the **Democratic Republic of Congo** said that there were many issues of importance to the African Group, which had not been taken into account in the instrument, but he was happy to live with it as it was a good illustration of finding middle ground. Given that the Durban was an African COP, there was need for a concrete deliverable on the GCF.

Ambassador Ali’ioaigi Elisaia of **Samoa** representing the **Alliance of Small Island States** said

that it would be naïve to expect all our issues to be reflected in totality in the document and as imperfect as it may be, he was prepared to live with the report and not disappoint his constituency.

Mr. Manfred Konukiewicz of **Germany** expressed unhappiness with a few provisions. He regretted that there was no window for reducing emissions from deforestation and forest degradation in developing countries (REDD-plus) and was not happy that carbon capture and storage could be eligible for funding by developing countries. He also was concerned that financial inputs for the Fund were restricted to only be from developed countries and was contradictory with indications of interest from various countries that are not developed countries to contribute to the Fund. He said this ignores major changes in world where a lot of wealth has moved to new regions and urged for this restriction to be lifted.

Mr. Jan Cedergren of **Sweden** said that the document was balanced with a lot of compromising. He did not like the reference in the selection of the staff for the secretariat to take into account geographical balance. He also said that need for geographical balance in paragraph 52 on the allocation of resources for adaptation contradicted the need to take into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, including LDCs, SIDS and Africa.

Mr. Nick Dyer of the **UK** congratulated the co-chairs for the document. He was however not in agreement with paragraph 22 where the selection of the host country of the Fund would be endorsed by the COP.

Mr. Per Callesen of **Denmark** said that paragraph 41 and 45 are inconsistent as paragraph 41 provides for the private sector to directly access the Fund while paragraph 45 states that access to the Fund’s resources would be through entities.

Mr. Bruno Oberle of **Switzerland** said that the document was not perfect but he appreciated the balance in the text.

Mr. Hyung-Hwan Joo of the **Republic of Korea** also said that the provisions restricted donations from developing countries.