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The Global Environment Facility (GEF): A Unique and Crucial Institution

Laurence Boisson de Chazournes

INTRODUCTION

The conclusion of multilateral environmental agreements (MEAs) is one of the greatest achievements of the past few decades in the field of international environmental law. Yet, what remains to be fully ascertained is the degree of compliance with them, in particular when such agreements are likely not only to affect the environmental, but also the economic, policies of the State parties. The rise of international environmental law has gone hand in hand with the need to strengthen capacity through financial and technical assistance.¹

Over time, the provision of assistance to developing countries to secure their commitment with objectives and provisions of MEAs has become a common feature. Some MEAs even state that the obligation of developing countries to comply with treaty obligations will depend upon the implementation, by developed countries, of the provision of financial cooperation.² Developing States are thus given the power to put pressure on developed States to ensure that they have the necessary financial means to meet their commitments.

Within this context, the Global Environment Facility (GEF) presents itself as a very interesting mechanism.³ The conditions of its establishment and scope of its mandate are directly linked to the strengthening of environmental protection and the promotion of sustainable development that took place in the early 1990s. In this article, the GEF's institutional profile, as well as its interactions with multiple actors, will be presented in order to highlight the complexity of the

relationships that have to be forged around the provision of technical and financial assistance. The GEF's role as a multi-convention financial entity will be assessed and insights will be drawn regarding the proposals for the strengthening of international environmental governance.

THE CREATION AND THE MANDATE OF THE GEF

THE CREATION OF THE GEF

The establishment of the GEF originates in 1989, when, at the annual meeting of the Board of Governors of the World Bank and the International Monetary Fund, the French Prime Minister suggested establishing a fund of voluntary grants devoted to the global environment. He also committed France to a contribution of 900 million French francs over a 3-year period.⁴ At the same session, the Federal Republic of Germany also pledged its support for this initiative.⁵

Developed countries were favourable to the creation of a fund of this type as a means of pre-empting other proposals for the creation of financial mechanisms during the preparations for the Rio Conference on Environment and Development (UNCED). Because of the global nature of the problems to be tackled through MEAs (such as climate change, loss of biological diversity and reduction of the ozone layer), it was

¹ See Stockholm Declaration on the Human Environment (UN Doc. A/CONF.48/14, 1972), Principle 12.

² See Montreal Protocol to the 1985 Vienna Convention on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987), Article 5(5); United Nations Convention on Biological Diversity (Rio de Janeiro, 5 June 1992), Article 20(4); United Nations Framework Convention on Climate Change (New York, 9 May 1992), Article 4(4).

³ For an analysis of the policy and legal dimensions of this mechanism, see L. Boisson de Chazournes, *The Global Environmental Facility as a Pioneering Institution: Lessons Learned and Looking Ahead*, GEF Working Paper 19 (GEF Secretariat, November 2003).

⁴ 1989 Annual Meetings of the Board of Governors – Summary Proceedings (World Bank, 1989), at 79. It was proposed that this fund be endowed with an amount of up to 1 billion SDR. The special drawing right (SDR) system was created by the International Monetary Fund (IMF) in 1969 to support the Bretton Woods fixed exchange rate system. A country participating in this system needed official reserves – government or central bank holdings of gold and widely accepted foreign currencies – that could be used to purchase the domestic currency in world foreign exchange markets, as required to maintain its exchange rate. Today, the SDR has only limited use as a reserve asset, and its main function is to serve as the unit of account of the IMF and some other international organizations.

⁵ Ibid., at 81–82.

important for donor countries to ensure the cooperation of developing countries.⁶

The GEF was set up as a 3-year pilot phase (1991–1994) by a resolution of the World Bank's Board. As such, the adoption of this resolution (91–5) represented a turning point for the World Bank in showing its willingness to get involved in the promotion of solidarity mechanisms calling for innovative initiatives and activities in the environmental area.⁷ The GEF was thought of as a means to this end. The importance of the fact that the GEF was first created as a pilot needs to be stressed. In the early stages, participating governments did not have the political will to reach an agreement on a formal structure, strategy and the future for such an entity. Some European countries saw the pilot as a learning phase and precursor of a future organization. They saw the GEF as a mechanism 'intended to grow into a more mature instrument for addressing global problems'.⁸ Other countries, especially the USA, viewed the GEF as a temporary institution that would become obsolete once the World Bank integrated the global environment in its portfolio.

In fact, the establishment of the GEF through the 3-year pilot phase appears to have been crucial for getting the entity off the ground. It allowed governments and the international community to gain experience in designing projects to address the global environment without having to agree on the formalities and technicalities of the entity. The experience gained in this period served to lead the way for the establishment of the GEF as an independent financial entity to serve:

as a mechanism for international cooperation for the purpose of providing new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits.⁹

There was a clear political willingness to avoid the creation of new bureaucratic structures. It was decided that existing institutions (United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP) and the World Bank) would manage the financial mechanism as implementing

agencies. The World Bank would also act as the trustee of the fund. In October 1991, agreement was reached between UNDP, UNEP and the World Bank to formalize arrangements in the area of operational cooperation among them.¹⁰ This agreement detailed the responsibilities of each of the three implementing agencies. They were expected to collaborate each in accordance with their respective comparative advantages.

As of April 1992, the States participating in the GEF agreed to undertake an evaluation and revision of its functions. The restructuring of the GEF was considered a key item in the preparations for the UNCED in Rio as well as during the negotiations of the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD). This mechanism, being the object of great interest among Rio Conference participants, was ultimately reformed according to the criteria and principles advanced by many of the participants in the above-mentioned negotiations.

The 1992 UNCED and the preparations leading up to it, as well as the negotiations of the UNFCCC and the CBD, which were opened for signature in June 1992, served as the catalyst for a two-pronged phase of parallel negotiations. One phase focused on the restructuring of the GEF so as to render it a permanent entity, while the other focused on the replenishment of its funds. The GEF thus gradually developed an identity and responded to the grievances of those seeking to reform it. For developing countries,¹¹ the principal concerns centred on, first, the principles of universality and transparency in the administration of the GEF, namely with respect to governance and the decision-making procedures, and, second, the accountability of the trustee (the World Bank) towards participating States, be they donors or beneficiaries. These diverse negotiations also presented an opportunity to refine the profile of the GEF. In fact, one of the requests of developing countries was that the resources allocated to the GEF by developed countries be increased. Developing countries also requested that these funds be new funds, supplied over and above existing resources (bilateral and multilateral development assistance). Moreover, southern countries advocated the need that the GEF address a wide range of global environmental concerns, including, among others, the financing of various activities contained in Agenda 21, the Programme of Action adopted at Rio.¹² The responses to these requests, and others, provided an opportunity to clarify the role and identity of the

⁶ C. Streck, 'The Global Environment Facility – A Role Model for International Governance', 1:2 *Global Environmental Politics* (2001), 83–84.

⁷ See World Bank, Resolution No 91–5 (October 1991), Annex C, which was adopted by the Executive Directors of the World Bank and supplemented by tripartite procedural arrangements with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP).

⁸ H. Sjöberg, *The Creation of the Global Environment Facility*, GEF Working Paper 10 (GEF Secretariat, 1994), at 29.

⁹ Instrument for the Establishment of the Restructured Global Environment Facility (Geneva, 14 March 1994), para. 2, available at <http://www.thegef.org/GEF_Instrument3.pdf>. Concessional funding refers to soft loans, i.e. loans obtained without any interest rate.

¹⁰ See Resolution No 91–5, n. 7 above, Annex C, which established the GEF in its 3-year pilot phase.

¹¹ Developing countries, along with UNEP, called for one or several new 'green funds'. However, when the UN Conference on Environment and Development convened, the developed countries refused to consider this option, as well as the creation of a new institution.

¹² *Report of the United Nations Conference on Environment and Development* (UN Doc. A/CONF.151/26, 12 August 1992).

GEF within the multilateral and bilateral mechanisms that were expected to finance environmental protection activities. They led to the adoption of the Instrument for the Establishment of the Restructured Global Environmental Facility in March 1994 (hereinafter 'the Instrument').¹³

THE MANDATE OF THE GEF

In 1991, at the time of the establishment of the GEF through its pilot phase, global environmental benefits were understood as covering four main areas: global warming and reduction of greenhouse gas emissions; protection of biological diversity; protection of international waters; and protection of the ozone layer. It was decided that the funds would be used to cover the incremental costs incurred through activities in these areas, that is the costs exceeding the measures adopted pursuant to national environmental protection policies and conducted in the absence of global environmental concerns.¹⁴

In 1994, it was confirmed that the GEF would finance only the incremental costs related to global environmental protection in the four focal areas identified in the GEF pilot phase.¹⁵ Other matters relating to the global environment and to Agenda 21, such as soil degradation, were included within the scope of application of the GEF upon the condition that they relate to one of the four focal areas and produce global environmental benefits.

The benefits deriving from the 'unitary' nature of the GEF were confirmed over time. It allowed for synergies among the focal areas covered by the GEF and contributed to raising more substantial resources than individual funds created for specific purposes would do.

In 2002, two new focal areas were added:¹⁶ land degradation, primarily desertification and deforestation; and persistent organic pollutants. It was also decided that activities to achieve global environmental benefits concerning chemical management would be eligible for funding.

The large scope of the GEF's activities explains why there is a need for a constant effort by the donor

countries to increase the level of its financing. The GEF is funded by donor nations, who commit money every 4 years through a process called the 'GEF Replenishment'. In 1994, 34 countries pledged US\$2 billion to fund the first GEF Replenishment. At the second GEF Replenishment in 1998, 36 nations committed US\$2.75 billion.¹⁷ In 2002, 32 donor countries¹⁸ pledged US\$3 billion to the third GEF Replenishment to fund operations between 2002 and 2006.¹⁹ At its November 2004 meeting, the Council requested the trustee of the GEF, in cooperation with the chief executive officer and chairman of the Facility, to initiate discussions on the fourth Replenishment of the GEF Trust Fund (GEF 4). The planning meeting was convened in Paris on 3 March 2005. The proposed timing of the GEF 4 discussions took into consideration the need to conclude replenishment discussions in early 2006 to give donor governments sufficient time to obtain the necessary parliamentary approvals to maintain continuity in their annual contributions to the GEF Trust Fund. Potential donors who did not intend to provide this minimum contribution were able to attend replenishment negotiations as observers. It has been decided that this policy will be maintained for purposes of the GEF 4 Replenishment discussions.²⁰

THE INSTITUTIONAL PROFILE OF THE GEF

THE STRUCTURING AND RESTRUCTURING OF THE GEF

The GEF was created on a special legal basis. The 73 States attending the Geneva meeting of March 1994, which successfully completed the negotiations,

¹³ See Instrument for the Establishment of the Restructured GEF, n. 9 above.

¹⁴ See Resolution No 91-5, n. 7 above, Annex C, which established the GEF in its 3-year pilot phase.

¹⁵ See Operational Strategy of the Global Environment Facility (Doc. GEF/C.6, October 1995), Foreword, available at <http://www.thegef.org/Operational_Policies/Operational_Strategy/operational_strategy.html>.

¹⁶ See Declaration of the Second GEF Assembly (Beijing, 18 October 2002), Appendix, available at <http://www.gefweb.org/Beijing_Declaration_-_English.pdf>.

¹⁷ See Resolution No 98-2 of the International Bank for Reconstruction and Development (IBRD) Executive Directors Approving the Second Replenishment of the GEF Trust Fund (Washington, 14 July 1998).

¹⁸ The 32 donor nations that pledged contributions to the third GEF Replenishment are Australia, Austria, Belgium, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Greece, India, Ireland, Italy, Ivory Coast, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey, UK and USA.

¹⁹ See Resolution No 2002-5 of the IBRD Executive Directors Approving the Third Replenishment of the GEF Trust Fund (Washington, 19 December 2002).

²⁰ See Planning Meeting for the Fourth Replenishment of the GEF Trust Fund, 3 March 2005 (Doc. GEF/R.4/1 and Doc. GEF/R.4/2, 10 February 2005), available at <http://www.thegef.org/Replenishment/paris_consultations.html>. In the context of the fourth Replenishment, the USA have introduced a 'country performance-based framework' for allocation of GEF resources, which has generated discussions among the donor countries; see the second paragraph of the section below on the GEF project cycle and the involvement of multiple actors. There is an issue too about the amount of the US contribution.

supported the adoption of the Instrument. They also agreed on the replenishment, which – as noted above – was to receive US\$2 billion over a period of 3 years. As a second stage, the World Bank, UNDP and UNEP each adopted the Instrument by way of a resolution or a decision of their respective competent bodies and in accordance with their own rules of procedure and regulations.²¹ It was, therefore, these three international institutions that created this financial mechanism. In view of these international institutions' involvement and States' acceptance of its establishment, the GEF was granted political legitimacy.²²

On the institutional level, the establishment of the restructured GEF was the result of joint action by the World Bank and the United Nations, represented by UNDP and UNEP. This marked a difference with the GEF in its pilot phase, the set-up of which the World Bank played a predominant role. However, it is interesting to note that, formally, only the World Bank had legal capacity for establishing this mechanism; the Instrument providing that the GEF Trust Fund be established by a resolution of the executive directors of the bank.²³ The involvement of UNDP and UNEP through the adoption of decisions was merely of a political nature and served to demonstrate the common willingness of the institutions to work together.

The GEF remained located within the World Bank, as it had been during its pilot phase. Its autonomy and independence were, however, both confirmed and strengthened. A functionally independent secretariat was created, with its chief executive officer (CEO) being accountable to the main executive organ, the GEF Council. The Instrument governing the restructuring

of the GEF also called for and clarified the coordination and allocation of roles between the organizations, be they trustee and implementing agency for the World Bank, or implementing agencies for UNDP and UNEP.

The restructuring of the GEF offered some assurance to States and other international actors as to greater transparency in the functioning of the mechanism. They also wanted the GEF to be more universally representative and more democratic.²⁴ These preoccupations are reflected in the GEF's structure, the decision-making process, as well as in the relations between this mechanism and the international institutions that assume the roles of trustee and implementing agencies.

THE ORGANIZATIONAL AND FUNCTIONAL STRUCTURE OF THE GEF

The Instrument provides for a council, a CEO/chairman of the Facility, an assembly, a secretariat, and a scientific and technical advisory panel (STAP). The latter was put in place by UNEP pursuant to the provisions of the Instrument.²⁵ UNDP, UNEP and the World Bank are identified as the three implementing agencies accountable to the Council for their GEF-financed activities.

The GEF Council is made up of 32 members. Its composition is designed to reflect two preoccupations, one relating to representation of all participants in a balanced and equitable way, the other taking into account the financing efforts made by contributors. Following the constituency make-up of the Bretton Woods institutions, members emanate from groups of States. Of the 32 members composing the Council, 18 are from beneficiary countries, of which 16 are from the Group of 77 and China, and two are from countries of Central and Eastern Europe and the former Soviet Union, while 14 are from industrialized countries. Some groups, however, include both beneficiary and non-beneficiary countries. The major financial contributors can also make up their own group.

The Council meets on a biannual basis and enjoys important prerogatives. It is responsible for adopting

²¹ See Resolutions No 94–2 and No 94–3 of the IBRD Executive Directors (Washington, 24 May 1994) and Resolution No 487 of the Board of Governors of the World Bank (Washington, 7 July 1994); Decision of the Executive Board of the United Nations Development Programme and of the United Nations Population Fund (Doc. DP/1994/9, 13 May 1994); and Decision Adopted by the Governing Council of the United Nations Environment Programme (Doc. SS.IV.1, 18 June 1994). The mechanism entered into force on 7 July 1994 and the new special trust fund became operational on 16 March 1995 (see Instrument, n. 9 above, Appendix C, para. 6(c)).

²² For a legal assessment of the status of the GEF, see L. Boisson de Chazournes, 'The Global Environment Facility Galaxy: On Linkages among Institutions', 3 *Max Planck Yearbook of United Nations Law* (1999), 254–259.

²³ See Instrument for the Establishment of the Restructured GEF, n. 9 above, para. 8 and Annex B ('Role and Fiduciary Responsibilities of the Trustee of the GEF Trust Fund') and Annex C ('GEF Trust Fund: Financial Provisions for Replenishment'). The World Bank is the trustee of the GEF Trust Fund. The GEF Trust Fund consists of the contributions received, the balance of funds transferred from the GEF, and any other assets and receipts of the fund. In serving as the trustee of the fund, the World Bank serves in a fiduciary and administrative capacity, and is bound mainly by its articles of agreement (see IBRD Articles of Agreement (IBRD, 16 February 1989), available at <<http://www.worldbank.org>>). The trustee is accountable to the GEF Council for the performance of its fiduciary responsibilities.

²⁴ See Instrument for the Establishment of the Restructured GEF, *ibid.* The Preamble to the Instrument affirmed that the fund was restructured 'to ensure a governance that is transparent and democratic in nature (and) to promote universality in its participation'.

²⁵ *Ibid.*, para. 24 reads as follows: 'UNEP shall establish, in consultation with UNDP and the World Bank and on the basis of guidelines and criteria established by the Council, the Scientific and Technical Advisory Panel (STAP) as an advisory body to the Facility. UNEP shall provide the STAP's Secretariat and shall operate as the liaison between the Facility and the STAP'.

and evaluating the operational policies and the programmes of the GEF. It was also granted decision-making powers regarding the use of GEF resources.²⁶ The World Bank, UNDP and UNEP, in their capacities as implementing agencies and the bank as trustee, are accountable to the Council for their activities that are financed by the GEF.²⁷ The Council also has the task of approving the administrative budget.

The GEF benefits from the services of a functionally independent secretariat,²⁸ supported administratively by the World Bank. Its CEO is accountable to the GEF Council, which is the main executive organ.²⁹ The case was made against an independent secretariat, which would have hinted at a new institution. Instead, the idea of a 'functionally independent secretariat' within the World Bank provided a way out. The Secretariat, headed by the CEO, is physically located in and administratively supported by the World Bank; functionally it is independent and not supervised by the World Bank.

The CEO's candidacy is proposed by the three implementing agencies and the Council appoints him or her. He or she is the head of the Secretariat and is directly accountable to the GEF Council. Among the tasks of the CEO is the significant and strategically important role of co-presiding Council meetings. As a matter of fact, two chairpersons chair the Council: the CEO of the Secretariat and an elected chairperson.³⁰

The GEF Assembly consists of representatives of all participating States.³¹ While in 1991 all developing countries wishing to become participating States were asked to make a financial contribution to the fund, this requirement was abandoned in 1994.³² This decision was one of the responses to demands for universality. The Assembly meets every 3 years and is primarily responsible for examining the general policies and operations of the GEF, for reviewing and evaluating the operation of the GEF and for approving, by consensus, amendments to the Instrument on the basis of recommendations by the Council.³³ It met for the first time in New Delhi (India) in April 1998

and met for the Second Assembly in October 2002 in Beijing (China).³⁴

The decision-making process was an important issue during the negotiations surrounding the restructuring of the Instrument. For developing States in particular, such a process was supposed to reflect the donor States' willingness to ensure that all members of the international community would administer the GEF collectively. It was to be another expression of the concern for universality, as expressed notably in Agenda 21.

The governing principle in the decision-making process is that of consensus within the Assembly and the Council. If 'no consensus appears attainable'³⁵ at the Council, a formal vote is taken. The voting procedure is governed by the principle of a double-weighted majority, which requires a 60% majority of the total number of participating States, as well as a 60% majority of the total amount of contributions made to the trust fund of the GEF.³⁶

The adoption of this double-weighted voting system, based on States' economic power on one hand, and the method of one vote per State on the other hand, responded to the universality concerns expressed by the developing countries, but also responded to the expectations of donor States by providing them with the possibility of a qualified majority vote and, thus, the possibility of a veto.³⁷ So far, since the GEF Council has always been able to proceed by consensus, it has never resorted to a vote.

³⁴ See 'The New Delhi Statement of the First GEF Assembly', 21 *International Environment Reporter* (1998), 396–397; see also, 'Beijing Declaration of the Second GEF Assembly', *ibid.* The Instrument provides that 'the Assembly shall meet once every three years'. Nonetheless, for both the First and Second Assemblies, the Council agreed that the Assembly should be linked with the completion of replenishment discussions and that it was therefore important for the GEF Assembly to be held after the completion of negotiations for the replenishment of the GEF Trust Fund. This has resulted in the Assembly being convened at 4-year intervals. Negotiations on the fourth Replenishment of the GEF Trust Fund are to be completed at the end of 2005. It is also clear that it would not be feasible to convene the third GEF Assembly in 2005. The GEF Secretariat proposed that the third GEF Assembly be convened in 2006, after completion of negotiations on the fourth Replenishment of the GEF Trust Fund. The host government for the meeting has yet to be identified. See *Information Note on the Organization of the Third GEF Assembly*, GEF Council, 3–8 June 2005 (Doc. GEF/C.25/Inf.5, 29 April 2005).

³⁵ See Instrument for the Establishment of the Restructured GEF, n. 9 above, para. 25(b).

³⁶ For more details concerning the conditions for the breakdown of the votes regarding the contributions made to the Trust Fund of the GEF and other associated practices, see *ibid.*, Article 25(c)(iii).

³⁷ This voting procedure is different from the one in place at the World Bank and at the IMF. The latter is based on the share of capital contributions to the organizations (a small equal number of votes is also allocated to each Member State, independently of its contribution to capital).

²⁶ *Ibid.*, para. 20(e).

²⁷ *Ibid.*, para. 22.

²⁸ *Ibid.*, para. 21.

²⁹ *Ibid.*, para. 21.

³⁰ *Ibid.* A division of responsibilities between these two chairs is detailed in para. 18 of the Instrument.

³¹ *Ibid.*, paras 13 and 14. As of 5 July 2005, there are 176 participating States.

³² *Ibid.*, Preamble.

³³ This was done during the Second Assembly, which took place in Beijing, China, in October 2002. See *Second GEF Assembly, Beijing, China, 16–18 October 2002* (Doc. GEF/A.2, 18 October 2002), available at <http://www.thegef.org/participants/Assembly/2nd_Assembly/2nd_assembly.html>.

The 12-member STAP, established by UNEP, provides the GEF Council with objective scientific and technical advice on GEF policies, operational strategies and programmes.³⁸ It also conducts selective reviews of projects. Besides responding to demands, STAP is engaged in bringing to the GEF Council's attention new findings and thinking on global environmental protection.³⁹ The panel maintains a roster of experts and its work is supported by a secretariat based at the UNEP headquarters in Nairobi. The GEF Council sets its terms of reference.⁴⁰

THE GEF PROJECT CYCLE AND THE INVOLVEMENT OF MULTIPLE ACTORS

According to the GEF's principles, project proposals for funding have to be developed by recipient countries, non-governmental organizations (NGOs) and other local entities. It is the task of the implementing agencies to match these proposals with the GEF operational programmes. As project ideas are initially explored, the agencies have to consider whether they contribute to the objectives of an operational programme. The other organizations are informed of each other's request. The project then has to be harmonized with the implementing agencies' project cycles. Thus, through a complicated procedure, the project must be aligned with the requirements of the GEF and those of the agencies. The end result is that every project needs to be approved twice, first by the GEF Council and then by the executing organs of the agencies.⁴¹ In addition, all this must happen according to the guidance of the relevant MEAs. The combination of these requirements has contributed to make the GEF project cycle rather complex.

The GEF has managed to reach a fair degree of universality and transparency in the course of its activities. However, donor countries, especially the USA, have advocated more and more for a new approach to the

allocation of GEF resources. This new approach might transform the dynamics of the GEF from an area-focused mechanism governed by operational and environmental criteria to a country 'performance-based framework' for allocation of GEF resources involving the application of criteria of a political nature.⁴² This raises concerns as to the universality and integrity of GEF activities in the future, which are essential to the protection of the global environment.

The GEF Instrument allows for other bodies to be involved in GEF activities through the implementing agencies. In order to enhance the efficiency and effectiveness of the financial mechanism, and to strengthen collaboration with executing agencies having special expertise within the GEF focal areas, the GEF initiated in May 1999 a policy of expanded opportunities for executing agencies, which enhances the direct access of these agencies to project preparation funds and their involvement in executing GEF projects.⁴³ Four regional development banks (the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IDB)), the Food and Agriculture Organization (FAO), the United Nations Industrial Development Organization (UNIDO) and the International Fund for Agricultural Development (IFAD) have been identified by the Council as agencies that may benefit from these expanded opportunities. Moreover, the Council has urged the three implementing agencies to make a greater effort to diversify and cooperate with a wider range of executing agencies.

The possibility of direct involvement (not through one of the implementing agencies) of these other agencies in project execution has been discussed since the establishment of the GEF. This issue relates directly to the core function of the GEF and particularly to its role as a catalyst for promoting innovative and far-reaching activities in the promotion of global environmental concerns. Following the policy recommendations made with the third Replenishment of the GEF Trust Fund,⁴⁴ the Council, in its session of October 2002, decided that the ADB and IDB must be granted direct access to GEF resources for the implementation of

³⁸ See *STAP Recommendations for Selective Review of Projects* (Doc. UNEP/GEF/STAP/7/7/add.1, 6 October 1995), available at <<http://www.unep.org/stapgef/reference/gefresources.htm>>.

³⁹ See *Quadrennial Report of STAP on the Broad Scientific and Technical Issues that Emerged During the Second Phase of the GEF*, Second GEF Assembly, Beijing, China, 16–18 October 2002 (Doc. GEF/A.2/Inf.2, 20 September 2002).

⁴⁰ The STAP is a mechanism that ensures quality control, which is a role to be further strengthened. At its meeting of 18 December 2001, the GEF Council 'recognized the need to strengthen the central role of STAP in the GEF system so as to enhance the quality of GEF-funded activities'. See *Joint Summary of the Chairs*, GEF Council Meeting, 5–7 December 2001 (Doc. GEF/C.18, 5–7 December 2001), at 7, para. 31.

⁴¹ See *GEF Operational Policies, Eligibility Criteria and Project Cycle*, available at <http://www.thegef.org/Operational_Policies/Eligibility_Criteria/eligibility_criteria.html>.

⁴² During its Special Meeting held on 31 August–1 September 2005, the GEF Council adopted a new Resource Allocation Framework (RAF), which explicitly links the award of GEF resources to a country's potential to generate global environmental benefits, as well as its performance, including transparency and good governance. See GEF, Special Meeting of the Council 31 August–1 September 2005 (Doc. GEF/C.25/2/Rev.1, 24 August 2005), at 1, para. 1.

⁴³ See GEF Council, *Expanded Opportunities for Executing Agencies: Recent Efforts and Current Proposals to Expand Opportunities for Regional Development Banks* (Doc. GEF/C.13/3, 7 April 1999).

⁴⁴ GEF Assembly, *Summary of Negotiations on the Third Replenishment of the GEF Trust Fund* (Doc. GEF/A.2/7, 19 September 2002).

GEF projects.⁴⁵ The African Development Fund, the concessional financing window of AfDB, was granted direct access in May 2004.⁴⁶

When the GEF pilot phase was established, the role of NGOs in GEF processes was rather weak, but it was strengthened over time. Today, participation by NGOs, both local and international, is a crucial aspect, not only at the project level, but also at the policy level.

The GEF Instrument provides that the Council shall determine the admission of observers to the GEF Assembly and Council meetings.⁴⁷ In November 1994, the Council decided to grant observer status to NGOs at its meetings and to hold consultations with NGOs in conjunction with each meeting. In consultations between the GEF Secretariat and NGOs, criteria for the representation of NGOs at Council meetings were elaborated and approved by the Council.⁴⁸ The aim was to ensure that NGO representation would be broad-based. In order to do this, NGOs have organized themselves into a network, which currently has 15 regional focal points, with one NGO acting as the central focal point in each. This network of regional focal points encourages and strengthens NGO involvement in governance of the GEF. It allows for consultations involving a wide spectrum of NGOs from all geographic regions to take place before Council meetings. Currently 435 NGOs are accredited to the GEF.⁴⁹

At the project level, several hundred NGOs and community-based organizations actively participate in the execution of GEF projects. An interesting feature is the GEF's Small Grants Programme (SGP) (administered by UNDP), which provides grants of up to US\$50,000 to finance activities of NGOs and community-based organizations.⁵⁰ The overall SGP project portfolio comprises 60% biodiversity, 20% climate change, 6% international waters and 14% multi-focal issues. The decentralized and demand-driven structure of the SGP has proven to be a key strength in ensuring country and community-level ownership and initiative. This programme has also contributed to increasing the visibility of the GEF at the local level.

With its grass-roots approach, it has helped to develop innovative ways for promoting sustainable development. For instance, in the field of climate change, SGP projects contribute to removing the cultural, institutional, technical and economic barriers, and promote dissemination of accessible, sustainable, climate-friendly technologies and measures throughout a locality or region. They primarily involve building local capacity; raising public awareness of climate change and energy conservation and efficiency issues; and demonstrating and disseminating appropriate technologies and measures. The projects may also aim to reduce the cost of suitable technologies for communities by supporting applied and participatory research and development.⁵¹

Another important initiative is the GEF's Medium-Sized Project (MSP), which is open, albeit not exclusively, to NGOs for grants under US\$1 million.⁵² As with all GEF-financed activities, MSP proposals must be consistent with the operational policies and principles of the GEF, including the principles incorporated in the Instrument and the Operational Strategy.⁵³ These grants benefit from expedited procedures that allow their processing to be made in a simpler and quicker way than for other grants, although there might still need to be some further simplifications in the process.

The GEF Secretariat has also put efforts into enhancing the involvement of the private sector in the GEF.⁵⁴ The private sector is involved in the GEF via the implementing agencies, be it the World Bank or UNDP. The World Bank, for its part, draws upon the investment expertise of the International Finance Corporation (IFC).⁵⁵ The projects financed by the IFC are channelled to the GEF through the World Bank as implementing agency. An open issue remains the fact that, regardless of the potential profitability of most private investments, the GEF provides concessional funding in the form of grants and hence subsidies to recipients. This type of funding can be seen as seed money or risk grants for initiating a process. These relationships are very much in line with the concept of

⁴⁵ *Joint Summary of the Chairs*, GEF Council Meeting, 14–15 October 2002 (Doc. GEF/C.20, 15 October 2002), at 5, para. 29.

⁴⁶ See *Joint Summary of the Chairs*, n. 42 above, at 5, para. 32.

⁴⁷ See Instrument for the Establishment of the Restructured GEF, n. 9 above, para. 20.

⁴⁸ *Joint Summary of the Chairs*, GEF Council Meeting, 1–3 November 1994 (Doc. GEF/C.2, 3 November 1994), Appendix, Decision on Agenda Item 6: 'Question of NGO Observers at Council Meetings and NGO Consultations'; *Joint Summary of the Chairs*, GEF Council Meeting, 22–24 February 1995 (Doc. GEF/C.6, 24 February 1995), Appendix, Decision of Agenda Item 9: 'Criteria for Selection of NGOs to Attend/Observe Council Meetings and Information on NGO Consultation'.

⁴⁹ See *List of GEF Accredited Non-Governmental Organizations* (GEF, undated), available at <<http://www.gefonline.org/ngolist.cfm>>.

⁵⁰ The Small Grants Programme currently operates in 80 countries that have ratified the CBD and UNFCCC.

⁵¹ Information on SGP activities and projects is available at <<http://sgp.undp.org>>.

⁵² See *MSP Guidelines* (Doc. GEF/C.8/13, October 1996), available at <http://www.gefweb.org/Documents/Medium-Sized_Project_Proposals/MSP_Guidelines/msp_guidelines.html>.

⁵³ See Operational Strategy of the Global Environment Facility (Doc. GEF/C.6, October 1995), available at <http://www.thegef.org/Operational_Policies/Operational_Strategy/op_stat/op_stat.html>.

⁵⁴ See *GEF Strategy for Engaging the Private Sector* (Doc. GEF/C.7/12, 7 March 1996); and *Engaging the Private Sector in GEF Activities* (Doc. GEF/C.13/Inf.5, 14 May 1999).

⁵⁵ The International Finance Corporation (IFC) promotes sustainable private-sector investment in developing countries as a way to reduce poverty and improve people's lives. The IFC is a member of the World Bank Group. Established in 1956, the IFC is the largest multilateral source of loan and equity financing for private-sector projects in the developing world.

public/private partnerships as promoted at the World Summit on Sustainable Development (WSSD) in Johannesburg in September 2002.⁵⁶

The private sector can also be of great help in leveraging additional financing in direct project co-financing and particularly in the replication of GEF project results beyond what is possible through the public sector.⁵⁷ However, although private companies and financial institutions such as private banks and insurance companies should play an important role within the GEF, so far this is not the case. The integration of private-sector entities in the GEF remains very limited when compared with other actors. That might be due to a lack of interest from the private sector as well as to a lack of information.

A question that arises is one of potential conflicts of interest and impartiality in decision making. Private-sector funding should not be at the expense of, or conditioned by, a private-sector agenda. This raises issues of legitimacy and ethics. It is clear that although private-sector funding is sought for the promotion of issues of common concern, they have no role in setting the agenda and nor should they appear to set the agenda. In this context, trust-like institutions, or institutions such as the GEF that are premised on fiduciary principles, are a particularly appropriate means of avoiding both bias and, indeed, allegations of bias. This is because control of the finances rests with a third party who is under an obligation to act in the interests of beneficiaries – and not the donors.

THE ROLE OF THE GEF AS A MULTI-CONVENTION FINANCIAL ENTITY

The GEF should be understood within the context of its link with the conventions protecting the global

environment. These institutional and conventional relations add a new dimension to the dynamic since they give MEA Conferences of Parties (COP) an input and, thus, influence on the use of GEF resources.

Currently, the GEF serves as the financial mechanism for the CBD and its Biosafety Protocol, the UNFCCC and its Kyoto Protocol (albeit in specific terms as agreed upon in the Marrakesh Accords),⁵⁸ as well as the Convention on Persistent Organic Pollutants (POPs Convention)⁵⁹ and the UN Convention to Combat Desertification.⁶⁰ As can be seen, the GEF has become a financing mechanism under a number of conventions with growing responsibilities under each of them. It is currently the only multi-convention financing facility in existence.

As the financial mechanism of a convention, the GEF is accountable for putting into operation the guidance approved by the relevant COPs concerning the policy, strategy, programme priorities and eligibility criteria relating to access to, and utilization of, the resources of the mechanism in the area covered by the convention. As foreseen in the memoranda of understanding concluded by the GEF with the concerned COPs, the GEF reports to each of them on how it has responded to the guidance approved by the parties.⁶¹

The GEF relationship to the global environmental conventions is a crucial component of the GEF mandate and *raison d'être*. It pertains to its political legitimacy. GEF assistance is critical to advancing the aims of the conventions in developing countries, and to assisting such countries to integrate global environmental concerns into their sustainable development strategies, policies and actions. Also to be noted, is that by placing the financial and technical activities to be undertaken within conventional legal frameworks, the global environmental conventions provide a framework

⁵⁶ See Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002 (UN Doc. A/CONF.199/20, 2002), Resolution 2, Annex. See, among others, paragraph 81 establishing that the third Replenishment of the GEF was successful and welcomed and 'will enable it to address the funding requirements of new focal areas and existing ones and continue to be responsive to the needs and concerns of its recipient countries, in particular developing countries, and further encourage GEF to leverage additional funds from key public and private organizations, improve the management of funds through more speedy and streamlined procedures and simplify its project cycle'. Paragraph 82 states that ways of generating new public and private innovative sources of finance for development purposes will be explored, 'provided that those sources do not unduly burden developing countries, noting the proposal to use special drawing rights allocations for development purposes, as set forth in paragraph 44 of the Monterrey Consensus'.

⁵⁷ GEF, *The First Decade of the GEF, Second Overall Performance Study of the GEF* (GEF, 25 January 2002), at 108.

⁵⁸ See, in particular, UNFCCC Decision 5/CP.7 (Implementation of Article 4, paras 8 and 9 of the Convention (Decision 3/CP.3 and Article 2, para. 3 and Article 3, para. 14 of the Kyoto Protocol)), UNFCCC Decision 6/CP.7 (Additional Guidance to an Operating Entity of the Financial Mechanism), and UNFCCC Decision 7/CP.7 (Funding under the Convention), in *Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001* (FCCC/CP/2001/13/Add-1, 21 January 2002), at 32–45. The Marrakesh Accords established three new funds: the Special Climate Change and Least Developed Countries Funds under the convention, and the Adaptation Fund under the Kyoto Protocol. These three funds are managed by the GEF.

⁵⁹ Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001).

⁶⁰ Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (Paris, 17 June 1994).

⁶¹ See Memorandum of Understanding between the Conference of the Parties to the Convention on Biological Diversity and the Council of the Global Environmental Facility regarding the Institutional Structure Operating the Financial Mechanism of the Convention (Doc. UNEP/CBD/COP/3/10, 11 October 1996).

within which to assess the legitimacy of the actions undertaken by the GEF implementing agencies,⁶² as well as by the executing agencies (the four development banks, FAO, UNIDO and IFAD). This point has significance for making the implementing and executing agencies more accountable in the environmental area.

Work still remains to be done concerning collaboration between GEF and the COPs. As stated by the GEF Council at its meeting of December 2001, there is a 'proliferation of guidance and priorities' emanating from the COPs.⁶³ This has led to the need for dialogue to ensure that the GEF is able to respond adequately to all requests. On the scientific level also, a more formalized exchange of views between the STAP and the advisory panels of the relevant conventions would contribute to enhance quality and effectiveness for meeting global environmental targets.⁶⁴

THE GEF IN THE REALMS OF STRENGTHENED INTERNATIONAL ENVIRONMENTAL GOVERNANCE

During the last 60 years, traditionally, new organizations have been created whenever a new domain needed to be regulated, and the problems arising from the multiplication of institutions had often been decried. Today there are calls for creating a new World Environment Organization.⁶⁵ At the same time, there is a need to think in terms of coordination and non-replication. Against this background, the GEF model of inter-institutional cooperation offers many promising perspectives that might be taken into account in

new institutional experiments like the establishment of a World Environment Organization. It shows how existing intergovernmental organizations may assume additional tasks through coordinated efforts, even if it is at the cost of complex inter-institutional relations. In addition, the GEF model offers a good example of 'clustering' different agencies and activities. It works on synergies and linkages. As such, it provides a viable and tried blueprint for the management of common interests.

At the institutional level, the GEF's governing structure is an interesting experiment of pragmatic reconciliation of the ideals of universality, democracy and transparency on the one hand, and a small and efficient decision-making body on the other. The voting constituencies, on the one hand, combined with a weighted double majority on the other hand, represent a mechanism that may well be used for other institutions and mechanisms.

These elements, as well as the institutional experience of the GEF gained over the last decade, should favour the acknowledgement of the GEF as the primary financial mechanism for the global environment that is capable of offering integration, coherence and positive impacts on the ground. All these features should be taken into account for making the GEF an indispensable mechanism for a new environmental setting.

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⁶² See Instrument for the Establishment of the Restructured GEF, n. 9 above, paras 15 and 26.

⁶³ *Joint Summary of the Chairs*, n. 40 above, para. 37.

⁶⁴ The STAP has made recommendations in this direction. See *Quadrennial Report*, n. 39 above.

⁶⁵ See Speech by Jacques Chirac, French President, to the Opening of the Fifty-Eighth Session of the United Nations General Assembly (New York, 23 September 2003). See also F. Biermann and S. Bauers, *A World Environmental Organization – Solution or Threat for Effective International Environmental Governance?* (Ashgate, 2005).