The Global Environment Facility as a Pioneering Institution : Lessons Learned and Looking Ahead

BOISSON DE CHAZOURNES, Laurence & GEF

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GEF

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Laurence Boisson de Chazournes
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List of Acronyms

ADB	Asian Development Bank
COP	Conference of the Parties
G7	Group of Seven
G77	Group of Seventy-Seven
GATT	General Agreement on Tariffs and Trade
GEFOP	GEF Operations Committee
GPG	Global Public Good
IDB	Inter-American Development Bank
ILO	International Labor Organization
STAP	Scientific and Technical Advisory Panel
UNCED	UN Conference on Environment and Development
UNDP	UN Development Programme
UNEP	UN Environment Programme
UNIDO	UN Industrial Development Organization
WHO	World Health Organization

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1. Introduction

At a time of global restructuring and calls for more responsive and participatory governance, new partnerships are being sought, as are new means of consolidating them through the creation of novel international structures. Today, international instruments are innovative, transectoral, and global in their approach. In this evolving scene, the Global Environment Facility (GEF) emerges as a model institutional experiment. The GEF can offer its experience as a blueprint for others, and it can draw on its experience in order to continue being at the forefront of the management of global public goods (GPGs).

1.1. The Ascendancy of Global Public Goods

Against the background of globalization, there is an increased awareness that certain problems are impervious to frontiers and need therefore to be addressed with global rather than individual action. All States become interested States and the resolution of such problems benefits the international community as a whole. In this context, lawyers often focus on and debate the emergence of an "international community" and "common interest" issues.[1] More pragmatically, economists refer to the existence of GPGs. Although the definition of GPGs is debatable, GPGs can generally be understood as "commodities, resources, services—and also systems of rules or policy regimes with substantial cross-border externalities—that are important for development and poverty reduction, and that can be produced in sufficient supply only through co-operation and collective action to achieve them."[2] It is impossible to prevent everyone from enjoying the benefits produced by GPGs; consumption by one individual does not detract from that of another. Examples include clean air or, more generally, the environment. So too, the eradication of a communicable disease is a GPG. The impact of GPGs crosses national borders. Primary education, for example, is *not* a GPG, but eradicating a communicable disease is. One can also note that there are "global public bads" such as narcotics trafficking, terrorism, and arms proliferation, the eradication of which will help promote a GPG.

1.2. How Best to Manage Global Public Goods? The Question of, and Need for, Institutions.

The problem lies in finding the best means of managing these common interests. One solution is to set up institutions, although this alone may be insufficient. As stated by the Report of the High-Level Panel on Financing for Development Report, which was established to fulfill the commitments enshrined in the UN Millennium Declaration: "For some global public goods, practically no agency has effective authority, and existing agencies struggle to respond to problems for which they are ill-equipped or lack a precise mandate."[3] Consequently, "several vacuums in global governance" exist.[4] At the same time, any solution to this problem should bear in mind the broader context: expressed desires to strengthen the United Nations system, which implies avoiding the unnecessary

1. For an analysis of the policy and legal contours of the notion of international public goods, see Heathcote, "Les biens publics mondiaux et le droit."
2. World Bank, *Poverty Reduction and Global Public Goods,* p. 2, ¶7.
3. UN Document, "Technical Report of the High-Level Panel on Financing for Development," p. 23.
4. *Idem.*

creation of new institutions or the duplication of activities.[5] In its executive summary, the Secretary-General's Millennium Report (detailed in Box 1) notes under the title "Networking for change" that "We must supplement formal institutions with informal policy networks, bringing together international institutions, civil society and private sector organizations, and national governments, in pursuit of common goals."[6] Thus, participation and cooperation are also desirable features of the solution.

Indeed, it is suggested that the inherent nature of GPGs leads to the need for different types of institutions than those which have until now predominated. Issues

Box 1: Extract from Kofi Annan's Millennium Report, *We the Peoples* (2000)*

B. Networking for change

335. The rapid pace of change today frequently exceeds the capacity of national and international institutions to adapt. So many things are changing at once that no organization on its own can keep track of them all—especially as the changes generally cut across traditional boundaries between academic disciplines and professional fields of expertise.

336. Part of the solution may be found in the emergence of "global policy networks." These networks—or coalitions for change—bring together international institutions, civil society, and private sector organizations, and national governments, in pursuit of common goals.

337. Sometimes international organizations are in the lead—the World Health Organization, for example, in the Roll Back Malaria campaign, or my own office in the case of the Global Compact with the private sector.

338. In other instances, a few national governments and non-governmental organizations are the driving force, as was the case with the campaign to ban landmines. In the Global Alliance for Vaccines and Immunization, the private sector and philanthropic foundations are the major players. In every case, these loose creative coalitions give new meaning to the phrase "we the peoples" by showing that global governance is not a zero-sum game. All the partners in such a network see their influence increase.

339. States, in particular, gain from joining global policy networks because they can achieve cooperatively what is impossible unilaterally.

340. Though they can take many different forms, global policy networks share a number of characteristics. They are non-hierarchical and give voice to civil society. They help set global policy agendas, frame debates and raise public consciousness. They develop and disseminate knowledge, making extensive use of the Internet. They make it easier to reach consensus and negotiate agreements on new global standards, as well as to create new kinds of mechanisms for implementing and monitoring those agreements.

341. Our involvement with global policy networks has been extensive but largely unplanned. We need a more focused and systematic approach. We need to determine how best to help governments, civil society and the private sector to work together to ensure that policy networks succeed in achieving their—and our—goals.

* The full report is available at *www.un.org/millennium/sg/report/ch5.pdf*.

5. See, for instance, UN Document A/RES/49/252, "Strengthening of the United Nations System," which states in its second preambular paragraph:
"Determined to strengthen the role, capacity, effectiveness and efficiency of the United Nations system and thus improve its performance in order to realize the full potential of the Organization, in accordance with the principles and purposes of the Charter of the United Nations, and to respond more effectively to the needs and aspirations of the Member States..."
6. Available at *http://www.un.org/millennium/sg/report/summ.htm*

pertaining to the global environment, for example, cut across both many sectors and competencies of existing institutions. The problems are so integrally linked to development and sectoral policies that the long-term solution—while fully recognizing the need for new funding to catalyze new approaches and action—must integrate these concerns into sectoral and development policies of governments, financing of development activities and the work of many actors. By definition, a “global” problem affects us all, so the solutions must involve all. In this context, there is a need not only for a solid North-South partnership to resolve the challenge, but also for strong relationships at the local, national, and global level.

Until now, problem solving has tended to use a national frame of reference. Today’s challenges require a more holistic approach: the development of appropriate instruments and approaches to meet the challenges at the global, regional, and national level in accordance with the needs of the particular problem at hand. Innovative partnerships are one avenue. Within this context, the GEF presents itself as one model for the management of GPGs, and indeed, finds itself in the thick of developments and new thinking on their management.

1.3. Holistic Approaches to Governance and the Fostering of Neighborhood Responsibilities

While the protection of the environment, like that of other common interests, is increasingly the subject matter of international concern, it does however herald a relatively new phase for international law and international relations more generally. As noted by the previously quoted High-Level Panel Report on the Financing for Development, the mechanisms for the effective protection of common interests still need to be worked out. This is because the paradigm shift, which has given a special place to common interests, has taken place only very recently. These ideas may, in some respects, have been envisaged since the adoption of the UN Charter in the aftermath of the Second World War, but they really only took root with the end of the Cold War when co-operation became not only effectively possible but also desirable. It is no coincidence that the GEF was born in 1991.

Box 2: Provision of Global Public Goods*

Some development issues both benefit and require the participation of the entire global community. GPGs have a strong impact on development and poverty reduction. In becoming more involved in the provision of GPGs, the multi-lateral development banks’ (MDB) main priorities should be fighting infectious diseases, promoting environmental improvement, facilitating trade and supporting financial stability. Each MDB should:

- Define more explicitly its role in the provision of these GPGs on the basis of its comparative advantages and effective capacity. Each MDB’s activity in these fields should be grounded in its core business and country work. The MDBs should work in close collaboration with other UN Agencies, bilateral donors and civil societies, exploiting synergies and effective partnerships. The World Bank should generally play a more active and a coordinating role –vis-à-vis the regional development banks (RDBs) – given its global mandate.

- Show how its engagement in the provision of these GPGs is reflected in its budget allocation and identify the most appropriate modalities for GPG financing.

* From *Strengthening the International Financial System and the Multilateral Development Banks*, Report transmitted by G7 Finance Ministers to the Heads of State and Government, Roma, 7 July 2001, p.11, paragraph 41.

The essential features of the GEF that make it such an appropriate solution to the challenge of managing common interests, lie, it is suggested, in the fact that the GEF can in broad terms be seen as a form of trust, to the extent that under this mechanism action is taken in the common interest and involves relationships based upon confidence, which may loosely be termed the "fiduciary principle," under which a system of checks and balances is created.[7]

The fiduciary principle operates more effectively in a community as opposed to a unilateralist context. As has been noted: "A judicial system with a dominant commitment to individual responsibility and self-reliance, for example, may in many instances be markedly less prepared to oblige its members to be their "brother's keeper" than one committed to fostering social co-operation and "neighborhood" responsibilities."[8] As underlined, the effective presence of such a community is only today emerging. Nonetheless, notions of collective responsibility are being extended not only to traditional actors such as states, but also to entities such as the private sector, NGOs, local communities, and individuals.

Bearing this context in mind, the GEF serves as a valuable model. Beginning with the process of its establishment, a few lessons can be drawn from its experiences for the purpose of gaining insights on its future functioning.

7. In his separate opinion in the Gabcikovo-Nagymaros Case, the then-Vice-President of the International Court of Justice (ICJ), Sir Christopher Weeramantry, referred to the "first principle of modern environmental law — the principle of trusteeship of earth resources" [Separate Opinion of Vice-President Weeramantry, *Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgement, ICJ Reports 1997,* 7 at 102]. There are, in fact, two beneficiaries of this "trust": the environment is to be preserved in the interests of the international community as a whole (an obligation relating to space), and also for future generations (a temporal obligation). See also Finn, "The Fiduciary Principle," p. 1.
8. Finn, "The Fiduciary Principle," p. 6.

2. The Creation and Functioning of the GEF in Time: a Phase-Approach

2.1. Pilot phase (1991-1994): A Preliminary Step—The Need to Learn

2.1.1. Political Motivation and Mobilization

In 1989, at the Annual Meetings 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 three-year period.[9] At the same session, the Federal Republic of Germany also pledged its support for this initiative.[10] These proposals gave political momentum to the creation of the Global Environment Facility.

Developed countries were favorable towards the GEF as a means for pre-empting other proposals for the creation of financial mechanisms during the preparations for the Rio Conference on Environment and Development (UNCED).· However, because of the global nature of the problems to be tackled, (i.e., climate change, biological diversity, and the ozone layer) it was important for the donor countries to ensure the cooperation of developing countries and to establish a feeling of partnership. Although the G77 and China did not play a key role in the pilot phase of the GEF, the process became more inclusive over time and was certainly consolidated with the restructuring phase in 1994.[11]

2.1.2. The Montreal Protocol Multilateral Fund as a Precedent

The Montreal Protocol Multilateral Fund, established in 1991 and made permanent in 1992, was a stimulus for the promotion of the GEF. States could grasp the reality of the mechanism.[12] One of the characteristics of this fund is that it is applicable within a particular framework, which shapes the way the Fund is used.

The US$240 million Multilateral Fund was created for the incremental costs of compliance with the Montreal Protocol and has continued to operate since 1991. The Fund is managed by an Executive Committee, which is directly appointed by the Protocol's parties. The Executive Committee, which meets three times a year and oversees the Fund's operations, is comprised of fourteen parties, of which seven are from "Article 5" states (i.e., developing countries that are recipients of the funds) and seven from "non-Article 5" states (i.e., developed countries). The Executive Committee has established two sub-committees and there are several independent advisory groups of experts and contact groups to share experiences in various areas. A Secretariat assists the Executive Committee in its tasks of developing three-year plans and budget, a system for fund disbursement, as well as in undertaking other management and monitoring activities. The four implementing agencies involved with the Fund are: the World Bank, the UN Environment Programme

9. World Bank, *Summary Proceedings*, p. 79. It was proposed that this fund be endowed with an amount up to 1 billion SDR.
10. *Ibid*., 81-82.
11. Streck, pp.83-84.
12. UNEP, *Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*. The proposals aimed at integrating this fund with the GEF were never realized, which leaves the former fully autonomous.

(UNEP), the UN Development Programme (UNDP), and the UN Industrial Development Organization (UNIDO). Developed countries may also provide assistance on a bilateral basis. The Implementing Agencies assist recipient enterprises to prepare projects that are reviewed by the Secretariat and then considered by the Executive Committee.[13]

It may be noted that, as clarified by the Sixth Meeting of the Parties in 1994, the Fund enjoys the legal capacity that is necessary for the exercise of its functions and the protection of its interests, and both the Fund and its Secretariat benefit from privileges and immunities necessary for its functioning.[14] As of July 2003, some 49 industrialized states have made contributions to the Multilateral Fund totaling US$1.61 billion. Four replenishments have already taken place.[15]

The World Bank, in its capacity as one of the Implementing Agencies, created its own fund, the Ozone Projects Trust Fund, with funding provided by the Multilateral Fund. In July 1991, the Executive Committee of the Montreal Protocol, which is responsible for administering the Multilateral Fund, reached an agreement with the World Bank.[16] This agreement was in some ways a precursor to the arrangements contained in the financial mechanisms set out in the Rio Conventions on Climate Change and Biological Diversity, as it stipulated that the resources in the Ozone Projects Trust Fund were to be administered by the World Bank according to the policies adopted by the Executive Committee of the Montreal Protocol—by a governance structure located outside the World Bank Group.

2.1.3. A Step-by-Step (Incremental) Approach

The GEF was set up in its pilot phase by a resolution of the World Bank's Board. As such, the adoption of this resolution (number 91-5) represented a turning point for the Bank in showing its willingness to get involved in the promotion of solidarity mechanisms calling for innovative initiatives and activities in the environmental area. The Bank then concluded a cooperative agreement with two UN agencies, UNDP and UNEP, thereby demonstrating again a change in its institutional behavior. However, all this could only occur after several significant steps were taken and decisions were made.

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 future for such an entity. There was as yet no consensus on the fund's future. 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."[17] Other countries, especially the United States, viewed the GEF as a temporary institution, which would become obsolete once the World Bank integrated the global environment in its portfolio.

The establishment of the GEF, first through a pilot phase of three years, appears to have been crucial for getting the GEF off the ground. It allowed governments and the international system 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 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."[18]

Global environmental benefits were understood in 1991 as covering four main areas: 1) global warming and reduction of greenhouse gas emissions, 2) protection of biological diversity, 3) protection of international

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13. See the Web site of The Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol, *www.unmfs.org/general.htm,* "General Information" page.
14. UNEP, *Report of the Sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer,* Decision VI/16, Juridical Personality, Privileges and Immunities of the Multilateral Fund.
15. See Multilateral Fund Secretariat, *Multilateral Fund for the Implementation of the Montreal Protocol* and *Reports of the Meetings of the Executive Committee*.
16. Agreement was reached between the Executive Committee and the World Bank in September 1991. See World Bank document SecM91-1154, 6 September 1991.
17. Sjöberg, *The Creation of the Global Environment Facility*, p. 29.
18. GEF, *Instrument for the Establishment of the Restructured GEF,* ¶2.

waters and 4) protection of the ozone layer. 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 environment concerns.

2.1.4. The GEF as an Institutional Link Between the UN and the World Bank Group

There was a clear political willingness to avoid the creation of new full-fledged international organization. It was decided that existing institutions (UNDP, UNEP, and the World Bank), would manage the fund as Implementing Agencies. In October 1991, agreement was reached between UNDP, UNEP, and the World Bank to formalize their arrangements for operational cooperation.[19] 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.

Indeed, the cooperation between the three agencies was meant to bring practical and political advantages. Some countries favored a strong role for the UN agencies, while others supported the leading role of the World Bank. The creation of the GEF was a means of satisfying both groups. As a matter of fact, the idea of bringing together the UN and the World Bank Group broadened the support for the new fund. Moreover, the GEF served to bring together the UN and Bretton Woods institutions, which was a first for the UN system. Now, more than ten years later, calls are being made from all fronts for the strengthening of this type of cooperation.

2.1.5. An Embryonic Governance Structure and the Absence of an Arbitrator

The countries participating in the financial mechanism in its pilot phase formed the Implementation Committee. This Committee reviewed the work program proposed by the Implementing Agencies. Participating governments were defined as those that had contributed to the Facility or had announced their intention of doing so. Major donor nations had preponderant influence in the GEF. Every decision had to be taken by consensus.

A group of fifteen scientists, the Scientific and Technical Advisory Panel (STAP), established by UNEP, would advise the participants on scientific issues. This panel was designed to help ensure the scientific and technical integrity of GEF process.

The beneficiaries were the developing countries that met the Bank's borrowing requirements or UNDP criteria for receiving technical assistance. They did not have to satisfy the conditions for a participating state. By virtue of a special program administered by the UNDP, the Small Grants Programme, non-governmental organizations (NGOs) could also benefit from grants. In addition, during the project preparation phase, NGOs and local populations gained the right to be consulted on the feasibility of the activities to be undertaken.

In rather blunt words, the Independent Evaluation of the Pilot Phase of the GEF, completed in 1993, states that "The coordination arrangements among the Implementing Agencies that were supposed to result in interagency synergy and provide leadership for the GEF as a whole have proved to be ineffective."[20]

It is true that during the pilot phase, the tensions between the Implementing Agencies, especially UNDP and the World Bank, had worsened. These differences were played out in the Implementation Committee, by some countries, especially some of the donors, and were related to power, influence, and control.[21] According to the GEF Independent Evaluation, the problem was due less to competition as such, than to the absence of an arbiter who could have provided guidance and decisions. A sense of diffusion-of-responsibility led to competition between the agencies. The UN agencies were not willing to accept the World Bank's leading role, and each Implementing Agency interpreted the policies decided upon by the Implementing Committee in its own way.[22]

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19. See World Bank, Resolution No 91-5, Annex C, which was adopted by the Executive Directors of the World Bank and established the GEF in its pilot phase.
20. Sjöberg, *The Creation of the Global Environment Facility,* p. 7
21. Sjöberg, *Restructuring the Global Environment Facility*, pp. 8-11.
22. GEF, *Independent Evaluation of the Pilot Phase*, pp. 99-101.

2.2. The "Consolidation-of-Maturity" Phase (1994-present): the Adoption of the Instrument for the Restructured Global Facility

2.2.1. International Emulation and Stimulation: Preparation for the Rio Summit

As of April 1992, the states participating in the GEF agreed to undertake an evaluation and revision of its mechanism, initially established as a three-year pilot. The restructuring of the GEF was considered a key item in the preparations for the UN Conference on Environment and Development (UNCED) as well as during the negotiations of the climate change and biological diversity conventions. This mechanism, being the object of great interest among UNCED participants, would ultimately be reformed according to the criteria and principles advanced by many of the participants to the above-mentioned negotiations.

Negotiations for restructuring the GEF began in 1993. In order to prepare for the restructuring, the GEF had commissioned an independent evaluation of the pilot phase that concluded:

> The GEF is a promising, and presently the only significant, mechanism for funding programs relevant to the protection of the global environment. However, the promise of this significant new fund will not be realized unless there are fundamental changes in the GEF strategies, the functions and relationships of its organizational components, and operating procedures.[23]

Some of the donor countries were averse to repeating the process of the Ozone Trust Fund (the Fund created by the Bank for promoting the Montreal Protocol objectives). The latter was not considered effective and some donors felt they did not adequately influence its running. Others wanted to avoid the proliferation of funds commensurate with the proliferation of environmental treaties. Instead, they envisioned the GEF as the financial mechanism for all future North-South financial transfers for environmental projects with global impact. On the other hand, developing countries along with UNEP called for one or several new "green" funds. However, when UNCED convened, the developed countries refused to consider this option, as well as the creation of a new institution. The G77 had to accept the GEF as a financial mechanism for the Conventions, but they made it clear that restructuring the GEF would be unavoidable.

2.2.2. An Opportunity to Clarify the Role and Identity of the GEF

The 1992 United Nations Conference on Environment and Development (UNCED) and the preparations leading up to it, as well as the negotiations of the Framework Convention on Climate Change and the Convention on Biodiversity, which were opened to signature in June 1992, served as the catalyst for a two-pronged phase of parallel negotiations. One phase would focus on the restructuring of the Facility so as to render it a permanent entity, while the other would focus on the replenishment of its funds. The GEF thus gradually developed an identity, a development that responded to the grievances of those seeking to reform the GEF.

For developing countries, the principal concerns centered on, first, the principles of universality and transparency in the administration of the Facility, namely with respect to governance and the decision-making procedures, and, second, the accountability of the trustee (i.e. 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 the developing countries was that the resources allocated to this fund by developed countries be increased. Developing countries also requested that these funds be new funds, supplied over and above existing resources (i.e. bilateral and multilateral development assistance). Moreover, southern countries advocated the need to widen the scope of applicability of this mechanism so as to enable it to address a wider range of global environmental concerns, including financing various activities contained in Agenda 21, the Program of Action adopted at Rio.[24]

23. *Ibid*.
24. UN, *Report of the United Nations Conference on Environment and Development*.

Developing countries accepted the GEF as the financing entity for the climate change convention and the biodiversity conventions, but only on an interim basis and on condition that it be restructured in accordance with criteria contained in both conventions.[25] The responses to these requests and others provided an opportunity to clarify the role and identity of the 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.

The negotiating process, which lasted two years and required seven meetings, was concluded in March 1994 in Geneva. At that time the GEF was designed to finance only the incremental costs related to global environmental protection in the four focal areas as identified in the GEF Pilot phase. 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.

2.2.3. The Replenishment Phases and the Strengthening of the Position of the GEF: Towards an Enlargement of its Operations and Activities

The subsequent replenishment phases, which take place every four years, have contributed to the strengthened recognition and position of the GEF as a crucial financial mechanism. A clear indication was provided with the third replenishment of the GEF, initiated in October 2000 with a planning meeting for the replenishment negotiations. The planning meeting welcomed the "initiation of the third GEF replenishment process and noted the importance of the GEF as the leading multilateral funding mechanism for global environmental protection..."[26] In August 2002, the donor countries agreed on the replenishment of the GEF's trust funds by US$2.97 billion to cover operations and activities from 2003-2006.[27] This was the largest replenishment that took place since the establishment of the GEF. It contributed to strengthening the GEF as the largest single source of funding for the global environment.

Taking into account the current structure of the GEF, the December 2001 meeting of the Council proposed to enlarge the scope of activities of the GEF.[28] It expressed "unanimous support for the designation of land degradation as a focal area, recognizing, in particular, that land degradation is a global issue and that in addressing land degradation, the GEF will be making a significant contribution to poverty alleviation and sustainable development."[29] At its May 2002 meeting, the Council confirmed this position with the proposal of an amendment to the Instrument. In addition, it proposed that persistent organic pollutants be also considered as a focal area and that the agreed incremental costs of activities to achieve global environmental benefits concerning chemicals management as they relate to the focal areas of the GEF be eligible for funding.[30]

The Second GEF Assembly, which took place in Beijing, China, from October 16-18, 2002, approved these amendments;[31] the three Implementing Agencies subsequently adopted them in accordance with their respective rules and procedural requirements. Two new subparagraphs were added to paragraph 2 of the GEF Instrument, to include two new focal areas: land degradation, primarily desertification and deforestation [subparagraph (e)] and persistent organic pollutants [subparagraph (f)]. Paragraph 3 was revised to read as follows: "The agreed incremental costs of activities to achieve global environmental benefits concerning chemicals management as they relate to the above focal areas shall be eligible for funding. The agreed incremental costs of other relevant activities under Agenda 21 that may be agreed by the Council shall also be eligible for funding insofar as they achieve global environmental benefits by protecting the global environment in the focal areas."[32]

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25. See articles 11 and 12 of the United Nations Framework Convention on Climate Change and articles 21 and 35 of the Convention on Biological Diversity.
26. GEF, *Summary of the Co-Chairs,* 2000.
27. GEF, *Summary of Negotiations of the Third Replenishment of the GEF Trust Fund*.
28. On the role of the GEF Council and other GEF organs, see Chapter 3.2 of this paper.
29. GEF, Joint Summary of the Chairs, December 2001, p. 8, ¶42.
30. GEF, Joint Summary of the Chairs, May 2002, p. 7, ¶30 and Annex; see also GEF, *Proposed Amendments to the GEF Instrument*.
31. See GEF, *Beijing Declaration of the Second GEF Assembly*, 5.1.
32. *Ibid.,* appendix.

3. Institutional Characteristics

In order to understand the institutional profile of the GEF, it is important to take into account that the restructured GEF emerged from an innovative process of diplomatic negotiation. In the restructured GEF, the institutional set-up assigns the roles in the system. The work sharing ensures checks and balances between the actors and the institutions.

3.1. The Establishment of the GEF: An Innovative Process of Diplomatic Negotiation

The Instrument for the Establishment of the Restructured Global Environment Facility was fashioned within the context of the hitherto traditional practice of international meetings between representatives of states, interested international institutions, as well as non-governmental organizations. However, its outcome was neither carried out by virtue of an interstate treaty nor as a result of an agreement between international organizations destined to create a new common institution towards which they could claim parenthood rights on an equal basis (such as the World Food Programme for example).[33] These scenarios emerged during the course of negotiations, but were not retained.

Instead, the GEF was created on a special legal basis. The 73 states attending the Geneva Meeting of March 1994 that successfully completed the negotiations supported the adoption of the Instrument for the Establishment of the Restructured Global Environment Facility. They also agreed on the Replenishment of the Fund, which was to receive more than US$2 billion over a period of three years. As a second stage, in accordance with the Instrument, the World Bank, the UNDP, and the 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.[34] It was therefore these three international institutions that created this financial mechanism, with the states having previously accepted its establishment, thus granting it political legitimacy.

On the institutional level, the establishment of the restructured GEF was the result of a joint action by the World Bank and the United Nations (represented by the UNDP and UNEP). This marked a difference with the GEF in its pilot phase for the set-up of which the Bank played a predominant role. Formally, only the Bank had legal capacity for establishing this mechanism. To this effect, the GEF Instrument provides that the GEF trust fund is to be established by a resolution of the executive directors of the Bank. 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.[35]

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

33. See Annex 1 of this paper.
34. Resolutions no. 94-2 and no. 94-3 of the World Bank's Executive Directors dated 24 May 1994 and Resolution no. 487 of the Board of Governors of the World Bank adopted 7 July 1994; Decision of the Executive Board of the United Nations Development Program for and of the United Nations Population Fund, DP/1994/9, adopted 13 May 1994; Decision adopted by the Governing Council of the United Nations Environment Programme, SS.IV.1, adopted 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 paragraph 6(c) of Appendix C of the Instrument].
35. See GEF Instrument, paragraph 8 and Annex B.

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 the UNDP and the UNEP.

The GEF offers valuable institutional perspectives for promoting international cooperation, and its usefulness has since been recognized, even if work remains to be done to further integrate and mainstream global environment concerns within the activities of its Implementing Agencies.[36]

3.2. Governance and Universality as Core Features of the GEF

The restructuring of the GEF offered some assurance to states and other international actors that sought greater transparency in the functioning of the mechanism. They also wanted the GEF to be more universally representative and more democratic. 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." These preoccupations are reflected in the mechanism'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 Instrument provides for an Assembly, a Council, a Chief Executive Officer/Chairman of the Facility, 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.[37] UNDP, UNEP, and the World Bank are identified as the three Implementing Agencies accountable to the Council for their GEF-financed activities.

3.2.1. The Council as the Main Executive and Stewardship Organ

3.2.1.1. Composition of the Council

The Council is the main executive organ of the GEF. Its composition had initially led to lengthy discussions. The OECD favored a small and balanced Council, whereas the G77 wanted the majority of Council members to come from developing countries. Today, 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 (16 from G77 and China, and two from countries of Central and Eastern Europe and the former Soviet Union). The remaining 14 Council members are from industrialized countries. Some constituency groups, however, include both beneficiary and non-beneficiary countries. The major financial contributors can make up their own group.

The GEF Instrument, in paragraph 16, provides that:

> The Council shall consist of 32 Members, representing constituency groupings formulated and distributed taking into account the need for balanced and equitable representation of all Participants and giving due weight to the funding efforts of all donors. There shall be 16 Members from developing countries, 14 Members from developed countries and 2 Members from the countries of central and eastern Europe and the former Soviet Union, in accordance with Annex E. There shall be an equal number of Alternate Members. The Member and Alternate representing a constituency shall be appointed by the Participants in each constituency. Unless the constituency decides otherwise, each Member of the Council and each Alternate shall serve for three years or until a new Member is appointed by the constituency, whichever comes first. A Member or Alternate may be reappointed by the constituency. Members and Alternates shall serve without compensation. The Alternate Member shall have full power to act for the absent Member.

The constituency phenomenon (i.e. alliances of states) is an interesting feature for an international community of more or less 200 states seeking rationalization and effectiveness in taking decisions. Economic power and subsequent power in decision-making processes should not, however, be the only criteria for constituting constituencies. There too the

36. See GEF, *Study of GEF's Overall Performance*, pp. 38-53.
37. Paragraph 24 of the *GEF Instrument* 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."

GEF Instrument has been innovative in setting criteria based on diverse grounds. Paragraphs 3 and 4 of Annex E attached to the Instrument provide that:

> 3. For each geographic region referred to in paragraph 2 [Africa; Asia and Pacific; Latin America and Caribbean; and Central, Eastern Europe, and the former Soviet Union] recipient constituencies shall be formed through a process of consultation among the GEF recipient country Participants in the region in accordance with their own criteria. It is expected that in this consultation process a number of criteria will be taken into account, including:
>   (a) Equitable and balanced representation from within the geographic region;
>   (b) Commonality of global, regional and subregional environmental concerns;
>   (c) Policies and efforts towards sustainable development;
>   (d) Natural resource endowment and environmental vulnerability;
>   (e) Contributions to the GEF as defined in paragraph 25(c)(iii) of the Instrument; and
>   (f) All other relevant and environment-related factors.
>
> 4. The non-recipient constituencies shall be formed through a process of consultation among interested Participants. It is expected that grouping of non-recipient countries will be primarily guided by total contributions as defined in paragraph 25(c) (iii) of the Instrument.

Currently, there are several mixed constituencies of donor and recipient countries—a phenomenon that impacts political leverage in the decision-making process.

The constituency model could be replicated in other fora beyond GEF. It brings with it legitimacy, as the grounds and criteria for selection are negotiated and transparent. It allows for all States to be represented in non-plenary organs of an institution.

3.2.1.2. The Council as The Driving Force

The Council meets on a bi-annual basis and enjoys important prerogatives. It is responsible for adopting and evaluating the operational policies and the programs of the GEF. It was also granted decision-making powers regarding the use of GEF resources.[38] The World Bank, the UNDP, and the 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.[39] The Council also has the task of approving the administrative budget.

3.2.2. A Functionally Independent Secretariat and the Chief Executive Officer (CEO)

The GEF benefits from the services of a functionally independent Secretariat,[40] supported administratively by the World Bank. During the negotiations, it became increasingly clear that there was a need for a secretariat with the mandate to manage the GEF. Initially, the donors would have preferred the option of a secretariat within the World Bank. Throughout the process, the United States and some other OECD (Organisation for Economic Co-operation and Development) countries saw the merit of a GEF Secretariat. However, the case was made against an independent secretariat, which might have foreshadowed a new institution. Instead, the idea of a "functionally independent Secretariat" within the World Bank provided a way out. The Secretariat, headed by the Chief Executive Officer (CEO), would be physically located in and administratively supported by the World Bank; functionally, it would be 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.[41] OECD countries wanted the CEO to chair Council meetings, again reflecting the World Bank model. The G77 favored a chairperson elected from the Council as practiced within the UN system. Finally, both sides found a compromise by blending the two systems: two chairpersons chair the Council, the CEO of the Secretariat and an elected Chairperson. A division of responsibilities between these two chairs is detailed in paragraph 18 of the Instrument.

38. *GEF Instrument*, Paragraph 20 (e).
39. *Ibid.*, ¶22.
40. Ibid, ¶21.
41. Ibid, ¶18.

The Secretariat is the only permanent institution that works exclusively for the GEF. It is made up of about fifty professional and support staff. Its permanent presence and its highly qualified and motivated staff make the Secretariat an influential player. GEF staff members are Bank staff appointed pursuant to appointment letters that confer upon them all rights, obligations, privileges and immunities of Bank staff. Moreover, the preparation and formulation of Council documents gives the Secretariat an input with respect to GEF policies. The Secretariat carries the institutional memory and stands for continuity of the GEF. It maintains contact with all actors and facilitates communication among them, making it the centerpiece of the GEF galaxy.

3.2.3. The GEF Assembly: About Inclusiveness

The GEF Assembly consists of representatives of all participating states.[42] 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. This decision was one of the responses to demands for universal membership. The Assembly meets every four years and is primarily responsible for examining the general policies and operations of the GEF, for reviewing and evaluating the operation of the Facility, and for approving, by consensus, amendments to the Instrument on the basis of recommendations by the Council.[43] It met for the first time in New Delhi, India in April 1998. The Second Assembly was held in October 2002 in Beijing, China. Both GEF Assemblies helped demonstrate the support, and the ownership that had consolidated over time, of all groups of states towards the GEF.[44]

The holding of GEF assemblies plays a role in making the GEF more legitimate and inclusive at the political level. In October 2002, the Assembly was called upon to enlarge the GEF's scope of activity, "noting that since the first Assembly, the GEF has produced significant results in effectively using its resources for global environmental protection and sustainable development, has strengthened and clarified its institutional structure, and improved the efficiency and effectiveness of its management and operations."[45]

3.2.4. The Decision-Making Process as a Vehicle for Consolidating Universality

The decision-making process was an important issue during the negotiations surrounding the restructuring of the Instrument. For the 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 an 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" at the Council, a formal vote is taken.[46] The voting procedure is governed by the principle of a double-weighted majority, which requires a 60 percent majority of the total number of participating states as well as a 60 percent majority of the total amount of contributions made to the Trust Fund of the GEF.[47]

The adoption of this double-weighted voting system is based on States' economic power on one hand, and the method of one vote per State on the other. The system also contains the possibility of a veto, responded to the concerns regarding universality as expressed by the developing countries. It also responded to the expectations of the donor States by providing them with the possibility of a qualified majority vote.[48] So far, since the GEF Council has always been able to proceed by consensus, it has never needed to vote.

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42. Ibid, ¶13 and 14. As of August 7, 2003, there are 175 Participating States.
43. Amendments were approved during the Second Assembly, which took place in Beijing, China, in October 2002. See part 2.2.3 of this paper for details.
44. See *International Environment Reporter*, "The New Dehli Statement of the First GEF Assembly," pp. 396-397; *see also*, GEF, *Beijing Declaration of the Second GEF Assembly*.
45. GEF, *Beijing Declaration of the Second GEF Assembly*.
46. *GEF Instrument*, Article 25(b).
47. 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 Article 25(c)(iii) of the GEF Instrument.
48. This voting procedure is different than the one in place at the World Bank and at the International Monetary Fund. 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).

3.2.5. The STAP: a vehicle for scientific expertise

The scientific and technical advisory panel (STAP) established by UNEP provides the GEF Council with objective scientific and technical advice on GEF policies, operational strategies, and programs. The STAP also conducts selective reviews of projects and brings new findings and thinking in global environmental protection to GEF's attention.[49] 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 the STAP's terms of reference.[50] The STAP wants to strengthen its role in the GEF system.

3.3. The Working Relationship Between the World Bank and the United Nations: Creating a Confidence-Building Climate

Even though it appears today that there is an even greater need for a close partnership between the Bank and the UN, ten years ago the two organizations lived worlds apart from one another. By bringing the two institutions together, the GEF was a pioneering endeavor.

The creation of the GEF meant effective cooperation between institutions with very different cultures. It was a first in the history of the UN system. Mechanisms and processes were put in place to strengthen this partnership. The nature of the partnership is further discussed in Box 3.

3.3.1. The Executive GEF Operations Committee

The original GEF Operations Committee (GEFOP) convened at least quarterly and included representatives of the Secretariat, the Implementing Agencies, STAP, and representatives from Conventions. The GEFOP was the mechanism for consultation on project proposals. However, most participants agreed "that GEFOP tended to create unnecessary conflicts among Implementing Agencies as well as between the Secretariat and the agencies."[51] It was replaced in 1996 by a new procedure for project review, under which the Secretariat would hold bilateral consultations with each of the Implementing Agencies. In early 1997, a "new GEFOP" was established as a forum where GEF policies are discussed on a regular basis. Chaired by the Secretariat, it is composed of the chair of STAP, representatives from the Implementing Agencies, and, where indicated, representatives from the Secretariats of the Conventions. Over time, the GEFOP's function has evolved towards being less implicated in the decision-making process, although retaining a role in legitimizing the inter-institutional cooperation.

Box 3: The World Bank/United Nations Partnership*

The Bank's partnership with the UN, already robust, will likely grow in significance. Many of the global priorities for Bank participation involve significant collaboration with UN agencies, as in the Global Environment Facility, or in UNAIDS, where the UN has the convening role. The UN brings to such partnerships its global membership and convening role, its large in-country presence, and the substantial expertise of its specialized agencies. The Bank can add its operational expertise and its capacity to mobilize and leverage resources.

* From World Bank, *Poverty Reduction and Global Public Goods. Issues for the World Bank in Supporting Global Collective Action,* page 11, paragraph 41

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49. See GEF, *Quadrennial Report of STAP*, on the broad scientific and technical issues that emerged during the second phase of the GEF.
50. The STAP is a mechanism that ensures quality control, 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 GEF, Joint Summary of the Chairs, 2001, p. 7, ¶31.
51. GEF, *Study of GEF's Overall Performance*, p.60, ¶364.

3.3.2. Other Means of Communication and Coordination

The Secretariat and the Implementing Agencies have also put in place other tools for coordination such as regular meetings among the heads of the Implementing Agencies, portfolio consultations among the Agencies, focal area task forces, and cross-sectoral task forces.[52]

In this evolutionary process of enhanced cooperation, the GEF Secretariat plays an important role. The Secretariat maintains constant relationships with all actors, consulting Council members, the Implementing Agencies, and NGOs. This facilitation role has contributed to erasing aspects of confrontation.[53] It is all the more important as the number of players increases. The Inter-American Development Bank (IDB) and the Asian Development Bank (ADB) have been both granted direct access to GEF resources for the implementation of GEF projects.[54]

The Instrument stipulates that an agreement was to be concluded among the three Implementing Agencies. This agreement was reached in 1991 for the pilot phase of the GEF, but has not yet been negotiated since the GEF restructuring. This seems to demonstrate that cooperation has found place in the regular course of activities of the GEF.

All these features have contributed towards making the Implementing Agencies work better together and learn from each other. As an example, the World Bank's good practices relative to the monitoring of projects have inspired similar practices in UNDP. Donor confidence in the mechanisms has benefited from the increased inter-institutional cooperation.

3.3.3. The Issue of Duplication of Roles: The Increasingly Complex Decision-Making Process and Project Cycle

According to GEF principles, project proposals have to be developed by recipient countries, NGOs, and other entities. It is the task of the Implementing Agencies to match these proposals with the GEF Operational Programs. As project ideas are initially explored, the Agencies have to consider whether the project idea contributes to the objectives of an operational program. The other Implementing Agencies are informed of each other's request. The project then has to be harmonized with the Implementing Agencies' project cycles. Thus, through a complex procedure, the project must be aligned with the requirements of the GEF and those of the Implementing 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 Implementing Agencies. In addition, all this must happen according to the guidance of the Conventions. The combination of these requirements has contributed to make the GEF project cycle very complex.

Although the procedure for requesting funds from the GEF is indicative of the close relationships between institutions and the necessary empowerment of Implementing Agencies for promoting the global environment, it has lost some of its value in the turmoil of procedural requirements. Simplification would hence both increase ownership by the players and improve GEF visibility in the GEF project approval process. One possibility would be for the Implementing Agencies to streamline their project cycles as much as possible, whilst at the same time requiring that the GEF projects (previously approved by the GEF Council) are properly known and discussed by the executive organ of the relevant Implementing Agency. The mainstreaming of the global environment within the Implementing Agencies should be understood in financial, operational, and political terms.

3.4. The GEF and the Conferences of the Parties (COPs)

The GEF mechanism is also to be understood within the context of its link with the global environmental conventions.[55] These institutional and conventional relations add a new dimension to the dynamic since they give the Conferences of the Parties (COPs) an input, and thus an influence, on the use of GEF resources.

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52. *Ibid.,* pages 61-63, ¶373-384.
53. See part 2.1 of this paper on the Pilot Phase of the GEF for more information on the role of the Secretariat.
54. GEF, *Joint Summary of the Chairs*, GEF Council Meeting, 14-15 October 2002, p.5, ¶29.
55. Both the UN Framework Convention on Climate Change and the Convention on Biological Diversity accepted the GEF as the financing entity for the conventions, albeit in a first stage on an interim basis and on the condition that it be restructured. See Werksman, "Consolidating Governance of the Global Commons, Insights from the Global Environmental Facility," *Yearbook of International Environmental Law* (6): 1995, pp. 27–63.

The GEF serves as the financial mechanism for the Convention on Biological Diversity and its Biosafety Protocol, the UN Framework Convention on Climate, and the Kyoto Protocol (albeit in specific terms as agreed upon in the Marrakesh Agreements).[56] It also provides financing for Eastern Europe and Commonwealth of Independent States (CIS) countries under the Montreal Protocol on the protection of the ozone layer. At the final negotiations for the international instrument on certain persistent organic pollutants (the Stockholm Convention on Persistent Organic Pollutants), it was agreed that a financial mechanism would be established for the purposes of the convention, and the GEF was identified as the principal entity entrusted with that task on an interim basis. The GEF was also called upon to implement as soon as possible an operational program for persistent organic pollutants.[57]

Would the COP of the UN Convention to Combat Desertification (in countries experiencing serious drought and/or desertification, particularly in Africa) so decide, the Second GEF Assembly confirmed that the GEF would be available as a financial mechanism of the Convention.[58] The Assembly called for the development of an operational program for prevention and control of desertification and deforestation.[59] The GEF Council approved new operational program at its May 2003 meeting. Subsequently, in September 2003, the COP of the Desertification convention designated GEF as an official financial mechanism.

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 operationalizing the guidance approved by the COPs concerning the policy, strategy, program priorities, and eligibility criteria relating to the access to and utilization of the resources of the mechanism in the area covered by the convention. The GEF reports to each Conference of the Parties on how it has responded to the guidance approved by the Parties.

The GEF relationship to the global environmental conventions is a crucial component of the GEF mandate and *raison d'être;* it pertains to GEF's 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. By placing the financial and technical activities to be undertaken within conventional legal frameworks, the global environmental conventions provide a framework within which to assess the legitimacy of the actions undertaken by the GEF Implementing Agencies (the World Bank, UNDP, and UNEP), as well as by the executing agencies.[60] This point, which so far has not been fully explored, has significance for making the Implementing and Executing Agencies more accountable in this area.

Work still remains to be done concerning the collaboration between GEF and the COPs. As stated by the Council at its meeting of December 2001, there is a "proliferation of guidance and priorities" emanating from the COPs.[61] There is a need for dialogue between GEF and COPS on this matter to ensure that the former is able to respond adequately to all requests. Additionally, on the scientific level, exchange of views between the STAP and the advisory panels of the Conventions would contribute to enhancing the quality and effectiveness for meeting global environmental targets.[62]

56. See in particular United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its Seventh Session, Held at Marakesh from 29 October to 10 November 2001*, pp. 32-45. See also GEF, *Second Assembly of the Global Environment Facility Proceedings*, Statement by Joke Waller-Hunter, p. 70, stating that "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. The funds are to be managed by the GEF."
57. The Second GEF Assembly has approved the following amendment to paragraph 6 of the *GEF Instrument*: "The GEF shall also be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants." See GEF, *Beijing Declaration of the Second GEF Assembly*.
58. GEF, *Beijing Declaration of the Second GEF Assembly*," ¶2, by which "the Assembly, recalling paragraph 39(f) of the WSSD Plan of Implementation, confirms that the GEF shall be available as a financial mechanism of the UN Convention to Combat Desertification in those countries Experiencing Serious Drought and/or Desertification, particularly in Africa, pursuant to paragraph 21 of the Convention, if the Conference of the Parties should so decide. In this regard, the Assembly requests the Council to consider any such decision of the Conference of the Parties with a view to making the necessary arrangements."
59. GEF, *Joint Summary of the Chairs,* GEF Council Meeting, October 14-15, 2002, p.4, ¶21.
60. See *GEF Instrument*, ¶15 and 26.
61. GEF, *Joint Summary of the Chairs*, GEF Council Meeting, December 5-7, 2001, ¶37.
62. The STAP has made recommendations in this direction. See GEF, *Quadrennial Report of STAP,* on the broad scientific and technical issues that emerged during the second phase of the GEF.

4. The GEF in the International System: Opening the Doors to other Partners

Within the framework of the GEF, there exists a clear desire to associate with other partners, such as NGOs and local populations.[63] This participation manifests itself in different ways, depending on the actors involved.

4.1. NGOs and Local Communities

4.1.1. About the NGO Network and Observer Status

When the GEF pilot was established, the position of NGOs was rather weak, but it strengthened over time. Today, participation by NGOs, both local and international, is crucial, 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. At its meetings in November 1994 and May 1995, 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 upon and approved by the Council.[64] The aim was to ensure that NGO representation would be broad-based. In order to do this, NGOs have organized themselves into a network. Today there is a network with fifteen regional focal points, with one NGO acting as the central focal point.

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 meeting. Currently more than 400 NGOs are accredited to the GEF. This wide spectrum of consultation might require some sort of tracing. One way would be to document all these meetings (through minutes, for example).

Another innovative means for NGO involvement relates to their participation at Council meetings. It resembles the constituency principle applicable for the participation of States in the Council. Today, five NGO representatives are allowed to attend the GEF Council meetings. They are allowed to make statements addressed to each agenda topic except during the discussion of the GEF budget. At the same time, another five representatives follow the debate from a neighboring video room. NGOs are responsible for the selection of their representatives and for the presentations on the issues.

4.1.2. NGO Involvement in the Execution of GEF Projects

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 Program, administered by UNDP and which provides grants of up to $50,000

63. Article 28 of the *GEF Instrument* also refers to the collaboration of multilateral development banks, development agencies, national institutions, private sector entities and academic institutions.
64. GEF, *Joint Summary of the Chairs*, GEF Council Meeting, 1-3 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, Appendix, Decision of Agenda Item 9: "Criteria for Selection of NGOs to attend/observe Council meetings and information on NGO consultation."

to finance activities of NGOs and community-based organizations. The decentralized and demand-driven structure of the GEF Small Grants Program has proven a key strength in ensuring country and community-level ownership and initiative. This program has also contributed to increase the visibility of the GEF at the local level.[65] With its grassroots approach, it has helped to develop innovative ways for promoting sustainable development. Another interesting feature is that the Small Grants Program has its own institutional structure within the GEF galaxy.

One should also mention the medium-sized grant program (MSP), which is open to NGOs (albeit not exclusively), for grants below US$1 million. Expedited procedures were established to allow MSP grants to be processed in a simpler and quicker way than larger grants. In practice, MSP grants do not yet fully benefit from expedited procedures—an issue that is the subject of complaints from NGOs. Simplification in the process is needed.

4.2. Increasing the Outreach of the GEF: The Case of the Executing Agencies

The GEF Instrument also allows for other bodies to be involved in operational activities through the implementing agencies.

To enhance its efficiency and effectiveness, and to strengthen collaboration with agencies that have special expertise within the GEF focal areas, the GEF initiated a policy in May 1999 that grants seven agencies direct access to project preparation funds and expands opportunities for involvement in GEF projects. Four regional development banks (the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank), FAO, UNIDO, and IFAD have been identified by the Council as "Executing 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.

An issue was the possibility of direct involvement (i.e., not through one of the Implementing Agencies) of these other agencies in project execution. 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 environment concerns. In this context, following the policy recommendations made with the Third Replenishment of the GEF Trust Fund, [66] the Council decided in October 2002 that ADB and IDB be granted direct access to GEF resources for the implementation of GEF projects.[67]

4.3. The Private Sector: Still to be Fully Incorporated

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.

The GEF Secretariat has put an effort into enhancing the involvement of the private sector in the GEF and presented a strategy to the Council in 1996.[68] Though this document was not well received, the GEF Council has come to support private sector involvement. NGOs that had been reluctant to see private sector involvement are today increasingly seeing its value.

4.3.1. The IFC: An Avenue for Funding Private Sector Projects

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). The projects financed by the IFC are channeled to the GEF through the World Bank as Implementing Agency. Taking into account the fact that most private investments are potentially profitable in terms of income generation, an issue arises as to the GEF providing concessional funding in the form of grants and hence subsidies to private sector

65. The Small Grants Programme currently operates in more than 64 countries and is scheduled to expand at a rate of 10 new countries per year. See GEF, "GEF Strategic Planning and Directions."
66. GEF, *Summary of Negotiations on the Third Replenishment of the GEF Trust Fund*.
67. GEF, *Joint Summary of the Chairs*, GEF Council Meeting, October 14-15, 2002, p.5, ¶29.
68. GEF, *GEF Strategy for Engaging the Private Sector* and *Engaging the Private Sector in GEF Activities*.

recipients. One argument in favor of this approach is that this type of funding can be seen as seed money or a risk grant for initiating a process. It is also very much in line with the development of the concept of public/private partnership as promoted by the WSSD in Johannesburg in September 2002.[69] It is noteworthy that there are projects with the private sector in which the GEF financing is not in the form of a grant.

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.[70]

In order to increase the relationships between the GEF and the private sector, one should take into account that the lack of knowledge about the GEF within the business community hampers private sector involvement. Another problem might be the need to develop a more streamlined project approval process to attract private investors.

4.3.2. The Persistent Organic Pollutants Convention as Another Breakthrough

As noted, the GEF is the entity entrusted with the operations of the financial mechanism referred to in Article 13 of the *Persistent Organic Pollutants*

Box 4: The Global Compact: What it Is and Isn't

United Nations Secretary-General Kofi Annan first proposed the Global Compact* in an address to the World Economic Forum on January, 31 1999. He challenged world business leaders to help build the social and environmental pillars required to sustain the new global economy and make globalization work for all the world's people. Here is an excerpt from the Global Compact:

The Concept

The Global Compact is not a regulatory instrument or code of conduct, but a value-based platform designed to promote institutional learning. It utilizes the power of transparency and dialogue to identify and disseminate good practices based on universal principles. The Compact encompasses nine such principles, drawn from the Universal Declaration of Human Rights, the ILO's Fundamental Principles on Rights at Work and the Rio Principles on Environment and Development (see Annex I for complete listing). And it asks companies to act on these principles in their own corporate domains. Thus, the Compact promotes good practices by corporations; it does not endorse companies.

The Actors and their Roles

The Global Compact involves all the relevant social actors: governments, who defined the principles on which the initiative is based; companies, whose actions it seeks to inform; labor, in whose hands the concrete process of global production takes place; civil society organizations, representing the wider community of stakeholders; and the United Nations, the world's only truly global political forum, as an authoritative convener and facilitator.

To engage in the Compact, companies and other appropriate organizations are asked to have their chief executive officer or executive director send a letter to the United Nations Secretary-General. It should express a clear commitment to support the Compact and its nine principles, and a willingness to participate in its activities.

*Available at *http://www.unglobalcompact.org/gc/unweb.nsf/content/whatitis.htm*

69. World Summit on Sustainable Development, Plan of Implementation, September 4, 2002. 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."

70. GEF, "*The First Decade of the GEF, Second Overall Performance Study,*" p.108.

(POPS) Convention. In this context, it is interesting to note that at its 10th meeting in February 2001, the UNEP Governing Council appealed to "Governments as well as intergovernmental and non-governmental organizations and the private sector to provide sufficient financial resources necessary for implementation of interim arrangements for the Convention prior to the first session of the Conference of the Parties."[71] Calls were made for a broader burden-sharing base for the third GEF replenishment. They have not opened the way for private sector funding. However, this might be a road followed for the fourth replenishment.

4.3.3. The Fiduciary Principle as a Means of Avoiding Allegations of Bias as a Result of Private Sector Funding

Calls for private sector involvement in solving issues of common concern at the international level have been expressed notably by UN Secretary-General Kofi Annan, when he put forward the idea of a Global Compact (referenced in Box 4). This fits in with the increased role of civil society, of which the private sector is said to be a part. There is in other words a call for "private" civil society to be accountable: to accept obligations in return for the voice and, indeed, influence it is being accorded on the international plane.

A question that arises, however, 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, the private sector has no role in setting the agenda and should not appear to set the agenda.

In this context, institutions such as the GEF or other trust-based institutions, premised on a fiduciary principle, 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, the World Bank, who is under an obligation to act in the interests of beneficiaries—and not the donors.

71. UNEP, *Governing Council Decision* 21/4, ¶8.

5. About Institutional Diversity and Creativity: The GEF as a New Type of Institution

5.1. The Legal Conditions for Establishing the GEF and the Prerogatives of the GEF Council for Concluding Arrangements

The conditions establishing the GEF have left their mark on the legal make-up of this entity. The GEF is not the result of an interstate agreement. This indicates that the states were not willing in 1994 to confer upon the GEF a distinct legal personality with the capacity to enter into international agreements within its sphere of jurisdiction.[72]

This issue played a role when the GEF Council examined and approved the arrangements and agreements with the Conferences of the Parties to the conventions on Climate Change and Biological Diversity.[73] Annex B of the GEF Instrument, which relates to the role and fiduciary responsibilities of the World Bank as trustee of the Trust Fund of the GEF, stipulates that the Bank is responsible (pursuant to a request of the Council) for formalizing the arrangements and agreements concluded with the Conferences of the Parties.[74] This provision illustrates the distinct manner in which the conventional relations are managed. Even if it falls to the Bank to formally conclude the arrangements and agreements, since the GEF Council was not granted this power, this can be carried out only once the GEF Council has had the opportunity to study and approve such arrangements and agreements. It was decided to adopt several *Memoranda of Understanding* to address the very issue of the allocation of responsibilities. The legal nature of these instruments was not further specified and these Memoranda were not signed by Conferences of the Parties and the GEF Council but rather, were adopted by them. The GEF Secretariat would consult with the World Bank on the content of these Memoranda. By so doing, the eventual problems of competence vis-à-vis the Bank that could have emerged were avoided.

It is interesting to note the two-step process that has been retained, allowing Participating States to decide on the nature of the GEF's external relations, while acknowledging the World Bank's capacity to formalize these relations.

The term "formalization" used by the Instrument merits some clarification. The World Bank's power to formalize arrangements or agreements concluded with the Conferences of the Parties falls within the scope of its fiduciary responsibilities as a trustee. It should be understood as only conferring upon the Bank the authority to evaluate if these arrangements or agreements conform to its responsibilities as trustee.

72. On the legal personality of international organizations, see International Court of Justice, *Advisory Opinion on the Reparation for Injuries Suffered in the Service of the United Nations*, pp. 178-180.
73. *GEF Instrument*, ¶20(g) and 27. See also Article 11.3 of the United Nations Framework Convention on Climate Change and Article 21.1 of the Convention on Biological Diversity.
74. Paragraph 7 of Appendix B of the *GEF Instrument* reads as follows:
"The Trustee may enter into arrangements and agreement with any national or international entity as may be needed in order to administer and manage financing for the purpose of, and on terms consistent with, the Instrument. Upon the request of the Council, the Trustee will, for the purposes paragraph 27 of the Instrument, formalize the arrangements or agreements that have been considered and approved by the Council with the Conferences of the Parties of the conventions referred to in paragraph 6 of the GEF Instrument."

5.2. The GEF is not an Isolated Case in the International Order

At the time of the GEF's establishment, a number of States, particularly industrialized countries, were wary of creating a new global organization that would be accompanied by a new global bureaucracy. The legal structure of the GEF responds to this concern. It also reveals the influence of pragmatism in international relations, which encourages the creation of institutional mechanisms that benefit from a certain degree of international stature. It is within this context that one can best appreciate all of the particularities of the GEF.

The establishment of the GEF is not an isolated case within the international order. One can refer to cases where new institutions were created resulting from the contribution of other international organizations without the intervention of States. One such example is the Joint Vienna Institute, created jointly by the IMF, the World Bank, the Organization for Economic Cooperation and Development (OECD), the European Bank for Reconstruction and Development (EBRD) and the Bank for International Settlements (BIS). One can also point to the recent transformation of an existing institution into a new organization, as was the case with the Organization for the Security and Cooperation in Europe (OSCE). The OSCE was granted numerous international attributes, without having been constituted by an intergovernmental agreement and without being formally granted international legal personality. This illustrates the great diversity existing among the international institutions and organizations. The GATT, for example, operated for a long period of time as a *de facto* international organization before having its international status and legal personality sanctioned by an intergovernmental agreement.

The World Food Programme (WFP) is an interesting example of such a hybrid creature in the international order. Moreover, it presents many similarities to the GEF (See Annex 1).

5.3. Towards Increasing Autonomy for the GEF

Some recent developments are illustrative of the increasing autonomization of the GEF, demonstrating how its brokering role leads it to be increasingly independent of the Implementing Agencies. The GEF Secretariat, which is functionally independent, plays a crucial role in this process.

In 1999, the GEF Council initiated a discussion upon the application of a fee-based system to pay the Implementing Agencies for GEF projects. The system is still under discussion and should be finalized by the GEF Council in 2004.[75] The fee-based system is supposed to provide transparency and implement cost savings. It would enable comparisons to be drawn between the various competitors and highlights their respective comparative advantages. Currently, the Implementing Agencies are reimbursed for their expenses through annual administrative budgets.

A new "programmatic approach" is currently being put forward. It rests on an agreement between a country with the members of the GEF system, *i.e.*: the GEF Secretariat, the Implementing Agencies, as well as with other donors. The country should agree with them on a multi-project approach to be implemented over a multi-year time frame (i.e.: medium and long-term). What is at stake in this new approach is the necessity for coordination and complementarity among projects and donors (as opposed to a fragmented approach based on projects being developed independently from each other) to address global environmental problems. The Implementing Agencies are called upon to implement projects within the framework of that programmatic approach.

These initiatives go hand-in-hand with the decision made by the Council in 1999 to give direct access to executing agencies to GEF funding for project preparation and therefore expanding its outreach towards other actors. Two regional Banks (ADB and IDB) were even granted, in October 2002, direct access to GEF resources for project implementation.

Even though the GEF lacks a distinct legal personality, these above-mentioned steps show that the GEF does nonetheless enjoy a large degree of functional autonomy. It is gaining autonomy in its relationship with the three Implementing Agencies with respect to cost issues and execution of projects.

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75. GEF, *Joint Summary of the Chairs*, GEF Council Meeting, May 14-16, 2003, ¶20. See also GEF, "A Proposal for a Revised Free Structure," GEF/C.21/10.

6. Concluding Remarks: The GEF as a Galactic Institutional Experiment

6.1. The GEF as a Viable and Tried Blueprint for the Management of Common Interests

During the last fifty years, traditionally, new organizations have been created whenever a new domain was to be regulated, and the problems arising from the multiplication of institutions have often been decried. Although called for by some, there is nonetheless great reluctance to create something like a new World Environment Organization. As stated in the Second Overall Performance Study of the GEF (see box 5), the GEF model offers a promising example of inter-institutional cooperation. The GEF model demonstrates how existing intergovernmental organizations may assume additional tasks through coordinated efforts, even if, it is true, 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 in the future.

At the institutional level, the GEF's governing structure is an interesting experiment of pragmatic reconciliation of the ideals of universality and 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 weighed double majority, 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 favor 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. The GEF seeks to be seen as "highly adaptable and uniquely positioned to take on additional responsibilities to help close the recurring gaps in the evolving environmental regime."[76]

6.2 Emulation of the GEF Model and the Way Ahead for the GEF

When it was first conceived, the GEF was innovative in that it created an inter-institutional mechanism for the financing of the protection of the global environment. What is worth noting is that today, financing mechanisms that are being developed to

Box 5: An excerpt from the *Second Overall Performance Study of the GEF* (published January 25, 2002)

The GEF is a unique experiment in interagency collaboration among important agencies in the UN system and the World Bank Group. This multilateral system in general is not well known for many successful attempts at interagency collaboration in operational matters. OPS2 considers the GEF to be a particularly encouraging example of constructive interagency cooperation.

76. See GEF, "CEO Note on GEF Activities Related to the World Summit on Sustainable Development." p.2, ¶ 13.

combat specific global problems, in many respects tend to emulate the GEF, or at least take into account its main features.

Most notable of today's examples is the Global Fund to Fight AIDS, Tuberculosis, and Malaria. This Fund (GFATM) emerged from the General Assembly's special session on HIV/AIDS in June 2001 and received political support at the G8 Summit in Genoa in July 2001. Its Board met for the first time on 28-29 January 2001 and the Fund officially began functioning in April 2002 (see Annex 2). In many respects, the debates which have taken place prior to the establishment of the GFATM echo the GEF as a blueprint (although in the end the GEF governance model was rejected), while highlighting the needs for the GEF to streamline its project cycle processes as well as further involving the private sector, so as to meet the new expectations placed on such financial mechanisms to deal with global issues.

The GEF is a work in progress. Already, its institutional achievements are quite remarkable. Since its restructuring, it has, among other things, stressed openness in its decision-making. The GEF is expanding the horizons of decision-makers both in developing countries and the multilateral development agencies to include the major global environmental issues as practical and policy concerns. It has welcomed NGOs into its planning and operations. The GEF has also promoted the involvement of affected communities both in the planning and the execution of sustainable development projects. It has unique experience in designing and implementing country-based responses to global environmental concerns, and is increasingly identifying and responding to the synergies between its focal areas. It has demonstrated in the past ten years that it is an innovative, flexible entity that can respond to new challenges and responsibilities, particularly those emanating from the global environmental conventions. It functions as a facility, that is to say a catalyst for triggering joint and parallel actions to be undertaken by all the concerned partners, states, international and non-governmental organizations as well as the private sector and local populations, in order to shape a durable and viable world.

Another advantage of a GEF–type structure is that it shows how the UN system can adapt itself to face new challenges, while making use of existing institutions. Flexibility and pragmatism were important tools for setting the policy and legal profile of the institution, providing it with independence, but not with a full-fledged international legal personality. This formula created a new partnership between the World Bank and the UN. The GEF's independent governance structure and the existence of its own Secretariat has been crucial for ensuring that global environment concerns penetrate the activities of the Implementing Agencies. It has also encouraged new ways of cooperation among these institutions and other partners, such as the regional development banks, NGOs, and the private sector. In fact, the GEF galaxy reveals the multiple relationships that are taking place in the international arena among partners of different profiles and standing, all of which have a role to play in promoting sustainable development.

Annex 1
About Autonomy: the Case of the World Food Programme (WFP)

The World Food Programme (WFP), now the largest international food organization, is an early UN institution with an interesting legal structure. It owes its origins to concern over how to dispose of food surpluses, a problem which would be turned to the benefit of feeding the hungry. The FAO had been considering the problem of food surpluses since 1949, via a Committee on Commodity Problems.[77] However, it was pursuant to a UN invitation issued to the FAO in 1960, that the WFP was created in 1961 on a temporary three-year basis. This action was bolstered by a United States offer for funding in the same year. The actual creation of the WFP was approved first by a resolution adopted by the WFP Conference on 24 November 1961 (Resolution 1/61, adopted on 24 November 1961), and then by General Assembly resolution 1714 (XVI) of 19 December of the same year. The WFP began functioning on 1 January 1963 and after its three-year trial period, was renewed in 1965, again by FAO (Conference Resolution 4/65) and UN General Assembly (Resolution 2195, XX) resolutions.

The WFP thus presents the peculiarity of having been created by resolutions of two different international institutions. Further, the WFP was founded by two organizations on the basis of parallel resolutions rather than on the basis of a signed agreement. The fact that the WFP was created by a plurality of organizations is a rare make-up for an international institution, certainly at the time of its creation. It is presented as an "autonomous joint subsidiary programme of the United Nations and the FAO" with legal capacity to contract, acquire and dispose of property and to be a party to judicial proceedings *only* by drawing on the legal capacity of the UN and the FAO.[78]

Thus, another feature similar to the GEF is that the WFP does not enjoy having an independent personality, but rather benefits from a certain degree of autonomy. Administration of the WFP is carried out under the guidance of the Committee on Food Aid Policies and Programmes, which is made up of 42 states, all members of either the UN or the FAO. Of the 42 states, 21 are elected by the Economic and Social Council and 21 are elected by the FAO Council. The WFP's Executive Director acts on the basis of a delegation by the Secretary-General of the UN and of the Director-General of the FAO.[79]

WFP operations are undertaken on the basis of in-kind, cash and service donations. WFP activities are financed through a trust fund established under FAO financial regulations.

77. See Lühe, "World Food Programme UN/FAO," 404 at 404.
78. World Food Programme, WFP General Regulations and Rules, Article VIII
79. See Schermers and Blocker, *International Institutional Law*, 1119 at §1777.

Annex 2
Funding Other Global Public Goods: The Global Fund to Fight AIDS, Tuberculosis and Malaria

Background

(1) Innovative Institutional Arrangements: UNAIDS

The approach taken by the international community to the HIV/AIDS pandemic has been characterized by innovation. Increased awareness of HIV/AIDS led to the establishment, in 1996, of a UN programme called the Joint United Nations Programme on HIV/AIDS (UNAIDS),[80] which draws together seven institutions (called Cosponsors).[81] The UNAIDS Secretariat operates as coordinator of action on AIDS rather than as a direct funding or implementing agency. It is guided by a Programme Coordinating Board with representatives of 22 governments, representatives of the eight UNAIDS Cosponsors, and interestingly, five representatives of NGOs, including associations of people living with HIV/AIDS. UNAIDS is the first United Nations program to include NGOs in its governing body. The Cosponsors and Secretariat also meet several times a year as the Committee of Cosponsoring Organizations (CCO).[82]

(2) Calls for Funding: the Establishment of the AIDS Fund

In the late 1990s, world attention turned to AIDS funding. Reflecting the transectoral and fiduciary based approach needed to address contemporary problems such as HIV/AIDS, Director-General of the World Health Organisation, Gro Harlem Brundtland, spoke on 19 April 2001 of "new partnerships that are driven by enlightened self-interest,"[83] such as the Global Alliance for Vaccines and Immunization (GAVI). GAVI partners include country representatives, bilateral agencies, technical agencies, UNICEF, the World Health Organization (WHO), the World Bank, private industry, the Bill and Melinda Gates Children's Vaccine Program at PATH (Gates CVP), the Rockefeller Foundation, and the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).[84] The Global Fund for Children's Vaccines is one of the main sources of revenue attached to GAVI and was instigated by the Bill and Melinda Gates Foundation. Contributions are now being made by some States such as Norway and the UK.[85] Another public-private initiative is the Medicines for Malaria Venture (MMV).

The idea for a global fund to combat AIDS was launched at the G8 Summit in Okinawa 2000 and was later adopted by the G8 in Genoa in 2001.

A decision was made to hold a Special Session of the UN General Assembly on AIDS in June 2001. Discussions surrounding the creation of the HIV/AIDS fund before the General Assembly special session reveal that governance issues were core questions. Some favored the creation of a fund, which, though not a United Nations fund, would have broad involvement of United Nations specialized agencies. Other participants felt that, because of its broad experience, UNAIDS should be the lead management agency of the fund, while yet others felt that it should

80. Previously, WHO alone had looked after AIDS issues.
81. UNICEF, UNDP, UNFPA, UNESCO, WHO and the World Bank, UNDCP (since 1999) and ILO (since 2001).
82. The UNAIDS Report, at 11.
83. United Nations, *United Nations Association Global Leadership Awards*, 19 April 2001, p. 4.
84. See The World Bank, *The World Bank and the Global Alliance for Vaccines and Immunization (GAVI).*
85. *Idem.*

Box 6: Extract from the G8 Summit Statement (Genoa, July 2001)*

15. At Okinawa last year, we pledged to make a quantum leap in the fight against infectious diseases and to break the vicious cycle between disease and poverty. To meet that commitment and to respond to the appeal of the UN General Assembly, we have launched with the UN Secretary-General a new Global Fund to fight HIV/AIDS, malaria and tuberculosis. We are determined to make the Fund operational before the end of the year. We have committed $1.3 billion. The Fund will be a public-private partnership and we call on other countries, the private sector, foundations, and academic institutions to join with their own contributions — financially, in kind and through shared expertise. We welcome the further commitments already made amounting to some $500 million.

16. The Fund will promote an integrated approach emphasizing prevention in a continuum of treatment and care. It will operate according to principles of proven scientific and medical effectiveness, rapid resource transfer, low transaction costs, and light governance with a strong focus on outcomes. We hope that the existence of the Fund will promote improved co-ordination among donors and provide further incentives for private sector research and development. It will offer additional financing consistent with existing programmes, to be integrated into the national health plans of partner countries. The engagement of developing countries in the purpose and operation of the Fund will be crucial to ensure ownership and commitment to results. Local partners, including NGOs, and international agencies, will be instrumental in the successful operation of the Fund.

*Available at *http://www.genoa-g8.it/eng/attualita/primo_piano*

be managed by an intergovernmental body of the General Assembly. Agreement was reached on the fact that the fund should be participatory, transparent, and equitable in its rules and operation and should not be used to impose the norms and values of one society on another. Many stressed that the fund's resources should be additional to the resources currently allocated to HIV/AIDS and that a large portion of those resources should be in the form of grants rather than loans. It was also pointed out that in addition to the proposed fund, developed countries should grant greater access to their markets for the products of developing countries to enable them to assume a greater share of the responsibility for the fight against HIV/AIDS.

In all these initiatives, emphasis has been on the role of non-state actors. In particular, the role of civil society in bringing local knowledge and expertise to a project has been highlighted. Perhaps more importantly, emphasis is being placed on the corporate sector's new role on the international stage. The implication is that corporate actors can fulfil this "responsibility" by financing funds such as the one being created for HIV/AIDS (another way is by lowering the price of drugs, a plan which pharmaceutical firms have recently agreed to with respect to AIDS related drugs in Africa).

The head of UNDP reminded participants of the 2001 General Assembly summit that trust in developing country stakeholders was pivotal to the success of the proposed fund. Without that trust, an oversight bureaucracy would develop, dooming the global fund to failure.

A Declaration of Commitment resulted from the special session of the General Assembly, in which AIDS was declared a global emergency. The Declaration supports the creation of "a global HIV/AIDS and health fund to finance an urgent and expanded response to the epidemic based on an integrated approach to prevention, care, support and treatment and to assist Governments, *inter alia*, in their efforts to combat HIV/AIDS with due priority to the most affected countries, (...) and [to] mobilize contributions to the fund from public and private sources with a special appeal to donor countries, foundations, the business community, including pharmaceutical companies, the private sector, philanthropists and wealthy individuals.[86] A fund-raising campaign was launched

86. United Nations, *Declaration of Commitment on HIV/AIDS*.

to that end[87] and the UNAIDS cosponsoring agencies and the UNAIDS Secretariat were to be provided with the resources needed to work with countries in support of the goals of the Declaration.[88]

The Global Fund to Fight AIDS, Tuberculosis and Malaria: its Structure

Following the decision to create a fund, a Transitional Working Group (TWG) of nearly 40 representatives of developing countries, donor countries, NGOs, the private sector and the UN system was formed. It met three times and handed down a final report on 14 December 2001. The TWG disbanded on that date, with an interim oversight arrangement established (Oversight Committee) which itself disbanded on 28 January 2002.[89]

The Board of the newly created fund met for the first time on 28-29 January 2002 in Geneva, where the Secretariat is based. [90]

Key features of the Fund

The Fund is a financial instrument (not an implementing agency), designed to minimize transaction costs for all parties, especially recipients. It is an independent public-private partnership with a streamlined grant-making process.

The Fund is made up of a Partnership Forum, a Board, a Secretariat and a Technical Review Panel (TRP).

The Partnership Forum is an informal grouping of stakeholders, allowing them to express their views on the Fund's policies and strategies and comprising representatives of donors, multilaterals and developing countries, civil society including NGOs and community based organizations, technical and research agencies and the private sector.

The Board is the main decision-making body of the Fund whose functions are to set policies and strategies in accordance with the agreed Purpose, Principles and Scope; set operational guidelines, work plans, and budgets for the Secretariat and TRP; make funding decisions; appoint and replace the Executive Head of the Secretariat; appoint a TRP; establish monitoring and independent evaluation mechanisms; establish a conflict of interest policy for Board membership; consider, approve and monitor co-operative arrangements with other organizations and institutions; represent the views of the various constituencies, advocate for the Fund and mobilize resources; appoint the Chair and Deputy; establish Board sub-committees.[91]

The 18-member Board is comprised of seven developing countries (based on six WHO regions and an additional country from Africa), seven donors, four civil society/private sector representatives (one Southern NGO, one Northern NGO, one Private Sector and one Private Foundation contributor). [92] The constituency principle is applied to State representation as well as for the other represented entities. However,

87. *Ibid* , ¶91
88. *Ibid,* ¶93
89. The committee was chaired by Dr. Kiyonga, with Sweden as Vice-Chair and included Italy, Brazil, US, Mali, Gates Foundation (WEF), and an NGO. Working groups were also established to report to the first meeting of the Board *inter alia* to establish a Technical Review Panel; and also to consider fiduciary issues.
90. Participants in the Board meeting include high-level representatives from Anglo-American PLC, Brazil, China, Gates Foundation, Italy, Japan, German Institute for Medical Mission, Health Rights Action Group, Pakistan, Sweden, Thailand, Uganda, United Kingdom, and the United States.
91. At its first meeting on 28-29 January 2002, the Board approved its first call for funding proposals from country partnerships. The initial round of grants has been awarded in April 2002. By that date, pledges of US$1.9 billion had been made (including a US$200 million pledge by the US on 28 January 2002). About US$954 million was disbursed in 2002. By the end of 2003, almost US$1 billion is expected to be disbursed. However, UN Secretary-General Annan estimates the Fund will need $7 billion to $10 billion a year to operate. Guidelines for the submission of proposals where drawn up by the Board at its first meeting. They explain eligibility, application procedures, the types of project funded and the criteria on which the funding is based.
92. All members of the Board are chosen by their own constituencies (i.e. NGOs appoint NGO representative, private sector appoints private sector representative, etc.). Currently, the private sector foundation seat is held by the Gates Foundation and the private sector company seat is held by Anglo-American PLC. The Northern NGO on the Board is currently the German Institute for Medical Mission and the Southern NGO is Health Rights Action from Uganda. The current donor country representatives on the Board are France, Italy, Japan, Sweden, the United Kingdom, the United States, and the European Commission. The seven developing countries are China, Brazil Nigeria, Pakistan, Thailand, Uganda, and Ukraine.

the most significant contributors can form their own group. In addition there are *ex officio* members without voting rights: one NGO representative (a person living with HIV/AIDS or from a community affected by TB or Malaria), WHO, UNAIDS, and the Trustee (i.e., the World Bank).

The Board will review its membership and procedures after the first two years. It will meet every three to four months, and its decisions will be taken by consensus. If on a matter of substance there is no consensus, any member of the Board with voting privileges may call for a vote in which case a decision can be taken by a two-thirds majority of those present of both a) the group encompassing the seven donor seats and the two private sector seats and b) the group encompassing the seven developing country seats and the two NGO seats. One can note that with regard to the governance structure as proposed on 14 December 2001, the private sector expressed concerns that the principle of a partnership between governments, civil society, and the private sector was not truly represented. The private sector wished to increase its representation on the Board.

The TRP is an *independent* impartial team of experts appointed to guarantee the integrity and consistency of the proposal review process. It is composed of 17 experts, together with 17 alternates. The TRP reviews grant proposals (based on criteria) and makes recommendations to the Board for final decision. Panel members are appointed by the Board, and emphasis is placed on their independence. UN Staff cannot be appointed but they can provide support staff. The Panel may need a full-time convenor who might be a member of the Secretariat.

The Secretariat, based in Geneva, is responsible for the day-to-day management of the Fund and reports to the Board. Its functions and composition are to be determined by the Board. The Secretariat will commission the TRP and ensure the independence of the review process. One can note that the Secretariat, made of about seventy people and headed by Dr. Richard Feachem since July 2002, is funded by the Fund itself.

Fiduciary Framework

The Fund is incorporated legally in Switzerland and benefits from a separate legal personality. The World Health Organization is the Support Service Provider.

As noted, the TWG has requested the World Bank to be Trustee. The role of the Trustee is to be responsible for receiving funds, their investment and disbursement. Private sector donations that would be tax deductible will be channeled to the Trustee; it appears that these funds are to be invested by the Trustee with the public sector funds.

The Trustee disburses funds on instructions from the Board to Board-approved country level entities (government and non-government). The Trustee, through the Board, reports to the GFATM stakeholders as a group on the financial management of the Fund resources. Any party handling funds needs to agree to be subject to independent random financial audits. Each Coordinated Country Proposal (CCP) should include plans for such audits. Details on disbursements methods remained to be finalized at the time the TWG was disbanded, although the alternatives had been identified and are set out in Annex to TWG report (14 December 2001) on Fiduciary Framework and Arrangements. Principles for ensuring financial and program accountability and options for channeling funds are also set out in that Annex and state that the Board, through the Trustee, will enter into grant agreements: all grantees will provide regular financial reports through the CCM to the Trustee or sub-Trustee as well as regular program reports. A number of questions remained unanswered, such as how to manage in-kind contributions (the Bank as trustee in such circumstances may be inappropriate) and the question of whether regional developments banks have a role in regional level proposals.

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About the Global Environment Facility

The Global Environment Facility (GEF) is an independent entity that unites 176 member governments—in partnership with international institutions, NGOs, and the private sector—to address global environmental issues while supporting national sustainable development initiatives. In 12 years, the GEF has evolved from a pilot program to the largest single source of funding for the global environment.

Since its inception in 1991, the GEF has committed $4.5 billion in grants and leveraged $14.5 billion in co-financing to support over 1,300 projects in more than 140 developing countries. GEF's Small Grants Programme, implemented by UNDP, has also provided more than 4,000 small grants directly to community groups and NGOs.

The GEF serves as the designated financial mechanism for the international conventions on biological diversity, climate change, persistent organic pollutants, and desertification. It also supports global agreements to protect the ozone layer and clean up international waters. GEF projects are implemented by the UNDP, UNEP, and the World Bank. Seven regional development banks and specialized UN agencies also help manage GEF projects.

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