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Restructuring the Global Environment Facility

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GEF

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1 Introduction

In March 1994, the Global Environment Facility (GEF) became a permanent mechanism to forge international cooperation and fund projects addressing global environmental problems. The March agreement marked the end of negotiations to restructure and replenish the pilot facility that had been created in 1990. Pressure to change the pilot facility had increased as the GEF was drawn into the preparatory processes for the 1992 UN Conference on Environment and Development (UNCED). In this context, it became clear that reform of the GEF was essential if it was to play a central role in the emerging system for handling global environmental problems.

Shortly before UNCED, Participants in this reform effort reached an agreement that outlined some principles for renegotiating the pilot arrangements. This agreement threw the evolution of the GEF into high gear. In the following two years, the facility was criticized, debated, evaluated, restructured, and replenished. As a result, before the pilot phase had come to an end, the GEF was transformed. A comparison between the pilot agreement of 1990 and the 1994 agreement illustrates how dramatically the GEF had changed.

The Pilot Facility of 1990

The early GEF mandate was to develop a work program that would explore in practice how global environmental problems could be effectively addressed. Four focal areas were selected: climate change, biodiversity, ozone, and international waters. At this time, funding that targeted global environmental problems was a new undertaking. The novelty of the approach was reflected in the exploratory terms of the pilot agreement, which featured demonstration, innovation, and learning as guiding concepts.

Exploration also encompassed the governance of the facility. Management was entrusted to a collective of three organizations—the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), and the World Bank. Putting their faith in these tried and tested agencies, the GEF Participants declined to provide detailed guidance, designing instead a facility with a minimum of formal arrangements. The resulting mechanism was unusual in the context of international agreements: the GEF was a loosely structured, action-oriented organization that did not entail a new bureaucracy. The Participants expressed their confidence in the arrangement by providing approximately one billion dollars for the three-year pilot phase.

It goes without saying that this is not the way the international community normally addresses problems. The mere boldness of the venture betrays its origins outside regular diplomatic channels. Instead, the initiative for the GEF came from the French Finance Ministry and was developed by the World Bank. The resulting pilot facility thus viewed global environmental concerns from a financial perspective. It was designed to give priority to efficient decision making and cost-effective operations. The proffered plan gave the GEF a three-year lease to test approaches and develop a project portfolio. Over time, however, the pilot phase's intended operational focus was overshadowed by an intensely political process of institutional change.

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The GEF of 1994

By the end of the restructuring process, the GEF was a different type of mechanism. Practical exploration had yielded to a more regulated approach. The informal arrangements of the pilot facility had been replaced by procedures set forth in a negotiated instrument. The governance system now consisted of an Assembly, a Governing Council, and a Secretariat.

The restructured facility gave expression to a wider set of values. The original emphasis on effectiveness had been expanded to incorporate more politically oriented principles, such as universality, participation, and transparency. Political legitimacy also had been increased by anchoring the facility more broadly in the larger system being developed to combat environmental problems.

At the international level, the GEF was endorsed by the governing bodies of UNDP, UNEP, and the World Bank. It also served as the interim financial mechanism for the Framework Convention on Climate Change and the Convention on Biological Diversity. Far from being singularly oriented toward getting projects underway, the GEF's future was now intimately bound to other international instruments. Furthermore, the linkages between the restructured GEF and national priorities had been substantially strengthened.

The number of Participants had quadrupled since the pilot phase, making developing countries a majority. Moreover, representation at the GEF meetings had changed from the early dominance by finance ministries to a more varied blend of ministries of environment and foreign affairs. The Participants showed their support for the restructured GEF by doubling the size of the pilot fund. At a level of USD two billion for the coming three years[1], the GEF was de facto the only significant source of new and additional environmental financing to materialize after UNCED.

Overview

This paper chronicles GEF's evolution from its early incarnation as a pilot facility, through the restructuring and replenishment processes, to its establishment as a permanent instrument. It covers the time period between the summer of 1991 and March 1994.

By documenting the development of the GEF, the paper aims to address some of the questions GEF's development raises. How was it possible, for example, to create a permanent financial mechanism during a time when finance was the most severe constraint on multilateral action? What circumstances contributed to an agreement that required restructuring less than a year into the operational stage of the pilot phase? And what was at stake to produce such a contentious restructuring process? Finally, the process yielded a new type of multilateral mechanism. To support this second result, the concluding section assesses the significance of the restructured GEF.

Linkages Between Power, Principles, and Governance

The restructuring of the GEF was a complex process with multiple linkages between issues and actors. An overview of some of the main linkage patterns helps explain the process.

When GEF negotiations began in late 1992, it became evident that the events in Rio had permanently altered the parameters of the debate. UNCED had mobilized a broad range of actors around issues of environment and development. Following Rio, when many of these actors turned their attention to the GEF restructuring, representation around the GEF negotiating table changed rapidly. More developing countries joined the process, and they began to articulate their views with one voice, as the Group of 77 and China. This unity signaled the beginning of a period of increasing polarization between the North and the South.

The differences between the North and the South positions became the main dividing line in the negotiations. It turned the restructuring process into a balancing act between their respective preferences. The struggle focused on the meaning and priorities of the principles set down at the April 1992 GEF meeting and at UNCED. These principles allowed for differing interpretations of what a future GEF should look like. The South stressed those principles related to political values such as participation, democratic decision making, and transparency. The North—while not refuting the importance of such values—argued the importance of pragmatic values that would ensure efficient and cost-effective decision making and op-

1 In March 1998, the GEF was replenished once more at a level of US$2.75 billion.

erations. During the negotiations, these different emphases influenced issue after issue. Even as the agenda was narrowed down to a few specific points of controversy, the positions of the respective blocs could be derived from their basic commitments to principles.

The commitments to principles were not unrelated to the balance of power between the two blocs. Had the restructuring been guided only by the political principles favored by the South, for example, the relative influence of developing countries within the governing structure would have increased to the point of dominance. This outcome was unacceptable to developed countries, which wanted more say over the allocation of the funds they contributed. In this sense, the developed countries' focus on efficiency also can be seen as a defensive posture to prevent the advance of political values that eroded Northern control. In the simplest terms, therefore, it is possible to cast the process of reforming the GEF as a power struggle between the North and the South. But it also can be understood as a search for a balance between two different sets of principles: increased political legitimacy and effectiveness in decision making and operations.

Considerations of power and principles hence went hand in hand. Discussions of the governance system followed the same pattern of alignment. Put simply, the issue was whether the GEF governance system should be based on a UN or Bretton Woods model. The mandate of the UN is reflected in a design that gives emphasis to democratic values, such as one-country, one-vote decision making. The Bretton Woods system, of which the World Bank is a part, is oriented toward actions that fulfill various economic and financial criteria. Financial institutions normally assign decision-making influence according to the level of contribution. Governance in these two systems thus differs based on each institution's primary purpose.

Because the GEF is a collaboration between UN and Bretton Woods institutions, it was by no means evident what its restructured governance system would look like. It was clear from the start that neither a solely UN or Bretton Woods model would be appropriate, but a debate ensued regarding how much of each should be reflected in the restructured facility. Those who put political values at the top of their list naturally preferred the GEF to look more like a UN body. Conversely, those who attached more importance to economic values preferred the restructured GEF to keep strong aspects of the Bretton Woods system. While somewhat simplified, it is fair to say that the South argued for the former, while the North supported the latter. Not surprisingly, within these two groups, preferences related to power, principles, and the governance system were closely aligned. Because of this correspondence of positions, the ultimate outcome of the governance system was an indicator of the results to come in the other two categories.

Linkages Between Actor Constellations

The GEF negotiating process becomes more interesting when one considers that the countries' division into two blocs was paralleled by the international agencies involved in the GEF. Frequently, the preferences of the UN agencies were allied with those of the South, while the World Bank's were closer to Northern views. The agencies had considerable influence in the negotiations, and they were seen—by themselves and their supporters—to represent different sides of the balance. And, like the two blocs of countries, the representatives of the agencies were strongly committed to the principles they advocated. At the same time, all three agencies took positions that, in practice, would have benefitted their relative influence in the restructured GEF.

To make matters more complex, the agencies' priorities were frequently mirrored on a country level. The World Bank has close relations with finance ministries, UNEP with environment ministries, and UNDP with ministries of development planning or foreign affairs. Within the overall bloc divisions, each country's position tended to depend on which ministry was represented in the negotiations. In some countries, the official position also was successfully influenced by NGOs. These domestic factors help explain the differences between the countries within the blocs.

At all levels, the GEF negotiations process forcefully illustrated the old saying "where you stand depends on where you sit." When one considers that the GEF engaged people from finance, development, environment, international law, and international affairs, the complexity of the process begins to emerge. For a time, the Participants' different views, the political intensity of the issues, and the many issue linkages combined to obscure what the GEF restructuring was about. Facts combined with political commitments, and opinions frequently were voiced without clarification about whether they referred to the pilot facility, the agreement under negotiation, or some future ideal. But while reaching an agreement among a group with a more similar orientation would have been simpler, we shall see that the wide range of interests involved in the process were what made possible the novel approach reflected in the restructured GEF.

2 The Early Stages of the Pilot Phase

A. The Rationale for the GEF Pilot Phase

The Global Environment Facility has been in a process of evolution since its inception.[2] To assess the changes over time, it is helpful to start at the beginning, with the political and intellectual underpinnings of the pilot facility.

The agreement to create the pilot facility was reached in November 1990. This agreement culminated a process that began with a French initiative presented to the World Bank Development Committee in September 1989. At that time, the French Finance Minister suggested that the World Bank be provided with additional resources to set up a program for funding environmental projects. He declared that France was ready to support such a program with Ffr 900 million during an initial three-year period. Germany which also favored an expansion of World Bank environmental funding quickly seconded the proposal. The French proposal did not, however, specify the purpose or form of the facility. The World Bank was left to develop a proposal, first through bilateral consultations with prospective donors and then a series of negotiations. The final session, which took place in Paris, was attended by 27 delegations, of which nine were from developing countries.

The agreement on the pilot facility reflected the distribution of interests and outlooks of those involved in the process. Although a third of the delegations came from developing countries, the process was driven by industrialized countries. In particular, the main impetus came from Europe, where global environmental problems first became a public concern. Less noted, but equally important to the outcome, was the dominance of staff from—or closely allied with—finance ministries. The shared perspective of this professional group both facilitated and shaped the original agreement. While differences of opinion between delegates from different parts of the world were evident, the agenda was dominated by issues relevant from a financial perspective.

The pilot facility was characterized by three essential components. The first was a commitment to fund only global environmental problems. The second was a collaborative management arrangement consisting of UNDP, UNEP, and the World Bank. And the third was the intent to make the pilot facility a three-year exploratory program. As each of the components were soon subject to criticism, the original thinking behind them is worth a closer look.

1) Funding of global environmental problems as distinct from national concerns

The GEF was to provide financing to combat global environmental problems in four areas: climate change, biodiversity, ozone depletion, and international waters. There were both political and intellectual reasons for formulating its mandate around

2 For a detailed account of how the GEF was created, see "From Idea to Reality: The Creation of the Global Environment Facility," by Helen Sjöberg, Working Paper Number 10, the Global Environment Facility, 1994.

strictly global problems. By the late '80s, global environmental problems had emerged as a major public concern in developed countries. In particular, climate change, depletion of stratospheric ozone, and conservation of biological diversity were widely debated in the media and among scientists at this time. Voters, especially in Europe, could therefore be expected to support the use of public funds to address these problems.

There were, however, no existing international mechanisms to handle global environmental problems. This void was further complicated by the structure of the international system, which is founded on territorially defined nation states, each primarily interested in benefitting the people who live within its boundaries. Previous international regimes have been designed to address problems between or within states, such as economic development, public health, security, or the environment. But upon discovery of global environmental problems, such as the depletion of stratospheric ozone, that were physically beyond any national domain, recognition grew that a territorial system could not easily address such concerns. Global environmental problems called for special efforts. Thus, the essential motivation behind the GEF was creating a mechanism capable of acting in the interest of the planet.

The logic of funding for the planet implies that resources would be spent in those areas where the greatest effect for the money could be found, independently of national borders. However, while developed countries could afford contributions for the globe, developing countries could not be expected to devote scarce resources to the long-term welfare of the planet while facing the immediate needs of their people. The GEF was hence designed to make it financially possible for developing countries to incorporate global environmental considerations alongside national development priorities. It was decided that eligibility for funds would be limited to countries with a per capita income of USD 4,000 or less, which roughly corresponded to definitions of developing countries used by UNDP and the World Bank. Although the exclusive allocation of GEF funds to developing countries creates an inescapable redistributive quality, interpreting GEF funds simply as assistance to recipient countries misrepresents the original purpose. The aim was to create benefits for the earth as a whole, and the funds were to enable developing countries to be full Participants in this effort.

Among the negotiators, partnership was an important notion in several respects. From a financial perspective, the division into contributors and recipients was seen as an obstacle to putting countries on an equal footing.Thus, it was decided that all Participants should be contributors in some measure to the facility, thereby bridging the division and underscoring the essence of the GEF: collective self-help without connotations of charity. A minimum level of contribution was set at SDR 4 million for the three-year pilot phase. (Participant status in the decision making was not related to receiving GEF funds.)

It followed from the GEF mandate that global environmental problems had to be defined in a way that allowed for a separation from national priorities. A first cut had been made in choosing the four focal areas, all of which had been discussed as global problems in other fora. But as the GEF was a funding mechanism, it was necessary to create a definition that segregated, in financial terms, global environmental problems from national goals. Funding for the global environment could not be allowed to divert resources from the main priorities of developing countries. These nations were concerned that developed countries would switch their contributions from regular assistance channels to the GEF. It was therefore an absolute requirement that GEF funds be additional to development assistance intended to further national goals. Moreover, the GEF was being designed to enable activities that developing countries would not otherwise undertake. Projects funded therefore had to be additional to domestic efforts that made economic sense on national grounds. These considerations led to the concept of incremental cost: the GEF should finance the incremental, or additional, cost incurred when proposed activities had benefits for the global environment. Note however that this separation was a financial one to ensure that funds were available for global environmental projects. That it did not necessarily imply a separation at the implementation level brings us to the second characteristic feature of the pilot facility.

2) Collaborative management by UNDP, UNEP, and the World Bank

Management of the facility was entrusted to three existing international organizations—UNDP, UNEP, and the World Bank—which were referred to as implementing agencies. These agencies were to work together to develop a work program and implement GEF projects. Some standalone projects were anticipated, but in most cases, the GEF component was expected to constitute a part of each agency's ongoing activities. From the agencies' perspective, the GEF funds made it possible to include global environmental protection measures that standard economic practices would have discouraged. From the perspective of global environmental action, global considerations could be integrated into national plans and efforts at the level of implementation.

The collaborative arrangement was seen to bring both practical and political advantages. It precluded the creation of a new international institution to deal with these newly recognized problems. The developed countries in particular wanted to minimize the need for an additional, and costly, international bureaucracy. It therefore made sense to use existing capabilities in a new combination. Furthermore, the three agencies were supported by different constituencies within member countries; this collaboration made the GEF palatable to a larger set of decision makers both among and within governments. In particular, the idea of bringing together the UN and the Bretton Woods systems in a substantial endeavor was considered valuable beyond the GEF itself. A final reason for selecting these established agencies was their ability to assist in improving the national institutions and policies needed for long-term environmental reform. But while everyone was pleased with the general idea of using the "comparative advantage" of each agency, the precise nature of the collaboration was not elaborated. It was assumed that the basic responsibilities assigned to the agencies would develop into a cooperative praxis as the agencies began their work.

3) An exploratory pilot phase

The loose structure and absence of formal arrangements were made possible by a third pillar of the arrangement, the three-year, exploratory pilot phase. One rationale for a trial phase was that funding projects to protect the global environment was a new experience. No agency knew what approaches would be most effective in providing global benefits. The pilot phase offered an opportunity to test innovative approaches and potentially valuable technologies with an eye toward finding methods that could be replicated on a larger scale.

The strategy of exploration also made it possible to steer around a number of political obstacles. There were, from the beginning, different visions for the future of the GEF. Some countries—e.g., Germany—had always seen the potential GEF in a larger international context that included the conventions. It should be remembered, however, that when the pilot facility was designed, negotiations for the conventions were just beginning. It was unclear how successful they would be and when they would be completed. The GEF was a way to embark on activities for the global environment and to have ready a practical funding mechanism when the conventions were coming into force. It is easy to exaggerate the foresight that existed at the time, but it is a fair assumption that the countries that strongly opposed proliferation of new international instruments while the GEF was being created would also oppose the proliferation of funds related to the upcoming conventions. They may have nourished the hope that an operational GEF could stave off such a development when the issue of financing for the conventions arose.

Other countries—e.g., the United States—saw the GEF not in light of the conventions but from a perspective of project implementation. They felt that in the long run all environmental problems should be integrated into regular development channels. From this perspective, the GEF was a temporary solution to be suspended when all development was environmentally sustainable and special efforts for global environmental problems were unnecessary. Both lines of reasoning—whether related to the conventions or to implementation issues—pointed in the direction of an exploratory pilot program.

The original Participants were well aware that they had taken on a difficult task. They believed that by highlighting the learning and demonstration aspects they had secured a three-year reprieve during which methods and approaches could be tested and developed. But while casting the facility in exploratory terms had made an agreement possible, it also left a number of issues unresolved. The first such issue to cause a problem was internal, and concerned the collaborative management approach. Other issues would be forced upon negotiators by external developments. As it would turn out, the pilot phase was anything but a grace period.

B. Testing the GEF—Interagency Relations in 1991

It was left to the three implementing agencies to translate the pilot arrangements into practice. The collaborative management approach was one of the pillars of the original arrangement, and the Participants had posited the agencies' activities as complementary. They expected to benefit not only from the expertise of the individual agencies, but also from the synergistic effects of cooperation. Since the various roles of the implementing agencies would become controversial later, an overview of how the arrangement developed during the first year helps explain some of the tensions to come.

The pilot facility was based on a minimum of formal arrangements and a schematic division of labor between the agencies. The formal cooperative mechanism envisaged by the Participants consisted of appointing a senior person in each of the three organizations to serve as a contact point. Their interaction was to be complemented by periodic meetings of the heads of the agencies. The agencies quickly established an Implementation Committee (IC) as a forum for collaboration. The first meeting of the IC was convened in December 1990, less than a month after the agreement on the GEF was completed.

The IC soon became the forum where the different interests of the agencies were played out. The reasons for the frequent conflicts in the IC are not hard to find. In structural terms, the IC presented the agencies with a pie, but without a clear formula for how it was to be divided. In the absence of an adjudicatory mechanism, it became, in the short run, a zero-sum game with strong incentives for each agency to carve out as big a piece as possible. This systemic bias in favor of self-interest was excacerbated by different expectations and corporate cultures. Each agency saw its unique contribution potentially threatened or diluted by the others. With scant guidance to follow, there was ample opportunity to develop different interpretations of how the operational arrangements were intended.

The World Bank

The World Bank did not initially see the GEF arrangements as problematic. The formal design favored the Bank and gave it good reason to believe it would continue to lead the operational phase as it had the negotiations. Remember that a majority of the delegates were from finance ministries—some were also Executive Directors of the Bank—and therefore had close ties with this institution. They had assigned three formal roles to the Bank: trustee, administrator, and implementing agency.

The trusteeship concerned the legal centerpiece of the arrangement, the Global Environment Trust Fund (GET), which was established by way of a resolution in the Bank.[3] In its second role, as Administrator, the Bank was assured of the day-to-day control of the GEF. These two roles also gave the Bank a virtual monopoly on relations with the Participants. The Bank was to convene the meetings of the Participants, prepare the agenda for the meetings, and submit reports of the agencies to the Participants. The World Bank also had the main responsibility for organizing the joint work of the agencies. The "Summary of Agency Responsibilities" stipulated that the Bank "will convene periodic meetings with the agencies to review progress" and "will organize the project selection, appraisal, and supervision process with UNDP and UNEP participation."[4]

The Participants also expected the Bank to take on a dominant role in its third capacity, that of implementing agency. It was responsible for investment projects, which were assumed to constitute the overwhelming majority of the projects. The documentation pointed out that the investment projects should "draw on the skills of all three agencies, as appropriate" but the responsibility of each should be "defined during [the] appraisal" organized by the Bank.

Initially, the Bank envisioned one internal office for handling all GEF responsibilities. As the work to prepare the work program began, it became apparent that the functional roles needed to be defined more clearly. The Bank therefore established an Administrative Office, which was mainly responsible for coordination between the agencies. To manage the Bank's role of implementing agency, a separate office was established to develop the Bank's share of projects in the GEF. Despite these efforts to separate the different roles, the Bank was heavily criticized for its dominance.

UNDP

The structure of the GEF and the Bank's dominance meant that the UN agencies would have to protect

3 See "Resolution 91-5," World Bank Board of Executive Directors, March 14, 1991.

4 See the so-called "Enabling Memorandum" entitled "Establishment of the Global Environment Facility," February 1991. This memorandum was presented to the Board along with the resolution on March 14, 1991.

their interests if "joint management" was to gain practical meaning. They could point to a document signed by the heads of all three agencies in September 1990 that stressed the need for a spirit of partnership and equality. It stated that the agencies were to "work together" and "prepare a joint work programme."[5] The UN agencies consistently used this and other documents to argue for their interpretation of how cooperative management was intended to work.

To UNDP, the GEF represented a significant opportunity to expand programming in the environmental area. UNDP therefore set out on a deliberate and ultimately successful strategy to expand its role in the GEF. One component of this strategy was to emphasize its connection to UNCED. UNDP was attuned to the emerging UNCED process and understood the opportunities that would arise in the junction of development and environment. In a press release following the agreement to create the pilot facility, UNDP ensured there would be a reference to Rio. The release stated that the GEF should serve to accumulate experience to be used at UNCED.[6] For this reason, UNDP supported accelerating development of the work program for the purpose of having demonstrable projects at the time of Rio. To this end, UNDP quickly developed a large number of project proposals to submit to the IC.

The question was, however, how large a share of the total funding that was intended for UNDP projects. The "Summary of Agency Responsibilities" merely stated "UNDP will play the lead role in coordinating pre-investment studies and technical assistance and ensuring their consistency with each country's development strategy and action plan."[7] It did not specify how large the share of technical assistance projects should be. In the clearest example of the distributional struggle, UNDP embarked on a controversial strategy to present as many project proposals as possible. In the long run, the policy was effective in the sense that UNDP garnered a large share of the project portfolio. In the short run, its tactics created tensions in the IC. The Bank was dismayed with UNDP's strategy for two reasons: it argued that, first, the Participants had never intended the UNDP share to be very large and, second, the mass production of proposals came at the expense of quality. UNEP, for its part, objected to presenting large tranches of projects to the Participants before GEF's Scientific and Technical Advisory Panel (STAP) was operational.[8]

UNEP

UNEP faced a set of issues different from UNDP or the World Bank. Although, it was described as an implementing agency, UNEP was not expected to implement GEF projects.[9] Instead, UNEP's role was related to strategic planning and science and technology issues, which included establishing and providing administrative support for the STAP. The task of making STAP operational consumed much of UNEP's energies at the beginning of the pilot phase. Everyone recognized the importance of having a solid scientific

5 "Joint Statement by the Heads of United Nations Environment Programme (UNEP), United Nations Development Programme (UNDP) and the World Bank on Co-operation with Developing Countries for Programmes to Protect the Global Environment," signed by Mostafa K. Tolba, William H. Draper II, and Barber B. Conable, September 17, 1990, in New York.

6 Personal communication with Mr. Michael Gucovsky.

7 See "Summary of Agency Responsibilities" in the Enabling Memorandum.

8 One early conflict was whether all technical assistance projects fell within UNDP's domain. Free-standing technical assistance was clearly UNDP's responsibility. The question was whether UNDP should have the option to implement the technical assistance components of investment projects, i.e., World Bank projects. The newly created Administrator's office was called upon to adjudicate the conflicting interpretations. The Administrator argued that each agency should process GEF activities in accordance with its own procedures; that is, the World Bank was responsible for any technical assistance that was part of an investment project. Whether or not the technical assistance component of World Bank projects should be delegated to UNDP was a matter for the World Bank to decide.

Another early problem between UNDP and the World Bank was the issue of preinvestment studies. The original notion was that UNDP also could undertake project preparation for World Bank projects. A Pre-Investment Facility (PRIF) was established by UNDP. The World Bank soon became unhappy with what it considered slow progress, first in making the PRIF operational, and later in assessments and timetables with regard to World Bank projects. This source of tension continued until early1992, when the World Bank decided to establish its own internal mechanism for conducting preinvestment analysis, the Project Preparation Advance (PPA). In both these cases, operational conflicts were resolved by a clearer separation of the tasks.

9 Later on, UNEP would implement a number of research projects.

foundation for GEF-funded work. And because the agencies were already preparing the first tranche of projects, setting up the STAP was an urgent matter. By April 1991, 14 international environmental experts had been selected, and the first STAP meeting could take place.[10] At the second Participants Meeting in December 1991, STAP presented an initial set of scientific and technical criteria that was to guide the development of future work program.

It also fell to UNEP as "the coordinator for existing and emerging global environmental conventions, [to] help ensure that the global policy framework for the GEF is consistent with existing conventions and related legal instruments and agreements, and that the experience generated by the Facility will be helpful in developing new treaties and agreements."[11] In this regard, UNEP's qualifications and capabilities were beyond doubt. The problem for UNEP was rather that of being torn between loyalties.

As the only international organization designed to deal with environmental issues, UNEP saw itself as the guardian of environmental consciousness. It is therefore not surprising that UNEP was somewhat uneasy about being bedfellows with the World Bank, whose environmental track record was routinely criticized. Moreover, UNEP could not rely on a set of Participants to advance its views; its traditional constituency among environment ministers had few representatives in the GEF. The situation was quite different in the system of existing and emerging environmental conventions. In these settings, especially the Montreal Protocol and the biodiversity convention, UNEP was very much at the center.

Mostly, UNEP's central role in developing the conventions and its role in the GEF were complementary. One early example is when Mr. Mostafa Tolba, Executive Director of UNEP, sought and received assurances that the GEF could not be allowed to undermine the Montreal Protocol by providing funding to non-signatories. (It was later agreed that funding would be provided to countries that were party to the Protocol but did not qualify for funding under the Interim Multilateral Fund of the Montreal Protocol.) On other occasions, however, UNEP seemed torn between its different responsibilities. One such situation would arise when the financial mechanisms for the conventions were discussed prior to UNCED.[12]

On several occasions, the different roles assigned to the agencies led to divergent preferences. UNEP, for example, felt that the first tranche of projects ought to be small and developed slowly in order to give STAP time to develop criteria. UNDP and the World Bank, on the other hand, both pointed to the need to get projects underway in order to demonstrate the advantages of GEF at UNCED. The low point of inter-agency relations in the first year came when the agencies were to develop a formal Interagency Agreement. At first, UNDP had problems with the draft produced by the World Bank. Then UNEP wanted the agreement to carry the exact text of the "Summary of Agency Responsibilities." It took some time to find a balance between the agency preferences. (The Inter-agency Agreement was eventually signed on October 28, 1991. It carried verbatim the earlier description of UNEP's and UNDP's responsibilities. The Bank's role was clarified, saying it would "manage the project cycle for global environmental investments supported by the GET, including associated technical assistance and training..."[13])

Participants' Views

How did the Participants view the result of the system they had created? The first meeting of the Participants took place in May 1991. The agencies presented a large first tranche of projects, representing 36 percent

10 The number of STAP members was expanded to 18 later in the pilot phase.

11 See "Summary of Agency Responsibilities" in the Enabling Memorandum.

12 Internal problems also contributed to reducing UNEP's influence in the GEF. One quite mundane problem was budgetary. UNEP repeatedly asked the World Bank for funds to cover start-up expenses, but the money was delayed. By September 1991, UNEP still had not received any GEF funds. Lack of liquidity may have influenced Mr. Tolba's decision not to create a formal GEF unit within UNEP. The GEF was designed to avoid additional bureacracy, but it was nonetheless understood that such a large venture could not function without small internal modifications in the implementing agencies. In contrast to UNDP and the World Bank, UNEP did not create an internal platform from which it could act in the GEF. Its effectiveness was further hampered by its location in Nairobi. In addition, the pressed time schedules often meant that documentation was late in coming to UNEP. As a result, UNEP felt marginalized in the GEF process.

13 See "Procedural Arrangement among the World Bank, UNEP, and UNDP for Operational Cooperation under the Global Environment Facility," October 28, 1991. p. 2.

of the total GET funds. Some countries (United States and Switzerland) agreed with UNEP that the tranche was too large and hastily developed, but most delegates supported the strategy to get projects underway in time for UNCED. They were also content with how the agencies had begun to shape the institutional arrangements.[14] Their most severe criticism concerned the information flow, which they felt needed improvement, partly in order to increase accountability.

By the second meeting in December, the agencies had signed the Interagency Agreement, STAP had produced an initial set of criteria, and the second tranche of projects was presented. UNDP was responsible for half the proposed tranche, and this time, both the quality and the number of UNDP projects drew attention. The Participants decided to establish an indicative guideline, whereby 70 percent were expected to be investment projects, leaving 30 percent for UNDP technical assistance projects.[15] This rule of thumb significantly reduced one source of tension between the implementing agencies.[16]

Relations between the agencies settled down after a year or so of struggling to find operational formulas. Clarification of the division of responsibilies and increased mutual respect between the agencies contributed to the improvement. Generally, the conflicts conformed to the theoretical prediction that distributional arguments will flare up when new "rules of the game" have to be established. This raises the question of whether stricter procedures should have been set from the beginning. Representatives of all three agencies dismiss this idea on the grounds that the agencies then would have withdrawn to their respective areas of competence—with less interaction as a result. Agency staff agree that once they resolved the initial conflicts, the operational work continued to improve. The experience from the first year suggests that, despite the turbulence, the agencies learned in the process and were well on their way of finding ways of working together effectively.

Based on these experiences—and again in line with theoretical predictions—it was not surprising that interagency conflicts resumed again when questions of governance reemerged and new rules of the game had to again be set.

C. UNCED Emerges—1991

Separate Initial Processes

The GEF was barely underway when external developments put the viability of the pilot arrangement in question. As momentum gathered in the various preparatory processes for the United Nations Conference on Environment and Development (UNCED), the broader regime for global environmental issues began to take form. When attention turned to the issue of finance, the GEF was irrevocably drawn into the debate. Within months of beginning its operations, the GEF found itself at the center of a highly political process.

In 1990, when the GEF was negotiated, several other international environmental processes were in their infant stages. The first substantive Preparatory Committee Meeting (PrepCom) for UNCED took place in August and focused on an analysis of the issues. The International Negotiating Committees (INCs) for the Convention on Biological Diversity (CBD) and the Framework Convention on Climate Change (FCCC) met formally for the first time in November 1990, i.e., the month of the final agreement on the pilot GEF. The target was to complete negotiations of the conventions in time for UNCED in June 1992. But in 1990, it remained to be seen whether this goal would be met and how strong the agreements would be.

At this time, the connection between the GEF and the UNCED processes was vague. They were negotiated by different groups of people in different institutional settings. The dominance of financial concerns in GEF negotiations focused attention on the size, effectiveness, and additionality of funds, not on the larger political and institutional context. UNCED mobilized a new and broader set of actors, which brought more political sensibilities to the fore. The subjects of environment and development attracted officials from for-

14 UNEP organized STAP, which held an initial meeting; a proposal was developed for a Small Grants Window to be placed with UNDP; an agreement was signed between the World Bank and UNDP; and the World Bank reorganized its internal capacity by creating the Administrator's Office.

15 UNDP would argue that the 30 percent for technical assistance projects be considered a "floor" rather than a "ceiling."

16 With the establishment of the PPA for project preparation within the Bank, another source of irritation was removed.

eign ministries, development cooperation and planning groups, environmental ministries, and—at Rio—heads of state. Initially, the majority of people involved with UNCED knew little or nothing about the GEF. But as issues of finance became more central, they began to take a hard look at the GEF.

Enter the South

When UNCED brought attention to the issues surrounding environment and development, the international scene became genuinely global. While widespread concern for the environment had originated in the North, these issues could not be tackled singlehandedly from there. For the first time, the full participation of developing countries was essential to the resolution of a serious international problem. Developing countries were quick to recognize the opportunities this situation entailed. As wealthier developed countries became fond of talking about global solidarity to address global problems, the developing countries seized the chance to emphasize present and historical inequalities and the need for differentiated responsibilities.

The increase in numbers, awareness, and representation from developing countries stands out as a central factor in what was to follow. The developing country governments entered the preparations for UNCED in large numbers, but they strove to articulate their interests as a block in the name of G-77 and China. Attempting to speak with one voice meant that in practice they frequently developed and harmonized their positions by way of their representatives to the UN in New York. This New York-based group differed in several respects from their compatriots in finance who had been involved in the GEF process earlier. The UN representatives were accustomed to working on a broad range of issues in a highly politicized environment, and tended to link specific issues to broader political agendas. The principle of democratic decision making was high on the agenda, and it translated into a preference for settings where decisions were made on the basis of one country, one vote. The developing countries hence consistently pulled in the direction of UN-style systems of governance, within which they would hold a majority of the votes.

Their support for the UN system made the developing countries natural allies with the UN agencies on a number of issues. Both UNEP and UNDP valued their ties with developing countries and often shared and voiced their concerns. With regard to the GEF, the UN agencies and developing counties shared the view that the GEF should be complementary—and subordinate—to the UN-led processes. This was a preference that would also find broad support in the increasingly active network of NGOs.

The Enhanced Role of Nongovernmental Organizations

NGOs in the Northern hemisphere had been instrumental in making the environment a public concern and in putting global environmental issues on the international agenda. They had consistently argued in favor of making financial resources available for global issues, particularly resources to deal with biodiversity conservation and climate change. When the GEF was proposed, they were deeply ambivalent. On the one hand, they were pleased that more funding would become available for environmental purposes. On the other hand, many groups were horrified that the World Bank would play a central role in these efforts. One of them was reminded of an old Chinese curse: "May your wishes be granted."[17]

The NGO networks that became involved with GEF were long-standing critics of the environmental practices of the World Bank. To place significant environmental funds with this organization, they argued, was "like asking the fox to guard the chicken house."[18] Before being entrusted with environmental funds, they insisted that the World Bank should substantively reform its environmental procedures and improve its public consultation policy.[19] However, when the Bush administration wavered on whether to support the pilot facility, the NGOs had nonetheless lob-

17 "Global Environment Facility: Cornucopia or kiss of death for biodiversity," by Jeffrey A. McNeely in Canadian Biodiversity of Nature 1(2) published by Canadian Museum.

18 See "Comments on GEF," by Peggy Hallward, Probe International, September 1990.

19 During the negotiations, a network of powerful NGOs lobbied various representatives of the U.S. government to this effect. See, for example, letter from Natural Resource Defense Council et al. to William K. Reilly, Administrator, U.S. Environmental Protection Agency, March 9, 1990.

bied to "support the formation" of the GEF.[21,22] Because of this initial concern related to the World Bank, one important criteria that would be used to assess the GEF was its impact on the practices of the World Bank—the so-called Trojan Horse effect.[23]

To better influence GEF's development, the NGOs requested participation in all aspects of GEF work.[24] The degree to which NGOs should be allowed to participate in meetings about GEF operations was to become a perennial issue at Participants Meetings. The problem was not whether, but how, the NGOs should be included. The value of NGOs in operational aspects was beyond question. From the start, they were able to propose projects and be appointed to review proposals. Opportunities for operational involvement were strengthened at the first GEF meeting when the Participants responded favorably to a proposal from the agencies to establish the Small Grants Programme. This program, managed by UNDP, made it possible for NGOs to implement projects. However, the crux of the NGO debate was whether non-Participants should be involved in formal decision making processes, and in particular, whether they should have observer status at Participants Meetings.

The first Participants Meeting in May 1991 set a pattern that was to repeat itself. While some countries were supportive of observer status from the start, others felt strongly that financial matters were for member governments to discuss among themselves. Following the debate, the Chairman concluded that "observer status of non-Participants is, therefore, not something that will find majority support at this meeting."[25] Instead, the Participants supported a compromise proposal to hold NGO consultations prior to each Participants Meeting. This was far from the final word on the NGO observer status issue. As the Chairman observed after the first meeting: "We will be asked to go further but I think this is where we stand today."[26] The implementing agencies had hoped the Participants would make a decision on the issue. They felt that the inability of the Participants to decisively settle the issue left the agencies with the difficult task of finding an appropriate way to relate to the NGOs. The relationship between the NGOs and the GEF would not improve as UNCED drew closer.

UNCED gave NGOs a more prominent role in international affairs than ever before. They were represented in significant numbers for the first time at the second PrepCom meeting in March/April 1991. By the Third PrepCom in August, 500 NGO representatives from 230 organizations were present. As the process evolved, the networks were broadened to give a stronger voice to NGOs from the South. This was reflected in the agenda promoted by the NGOs at UNCED. It entailed shifting toward a broad critique of prevailing development models and the international economic system. As the GEF became more central to the debate, it too would be subject to this systemic criticism.

Focus on Finance

A working group on cross-cutting issues, including finance, had been established at UNCED's Second PrepCom in the spring of 1991.[26] The first substantial

20 Letter (by fax) to Mr. Nicholas F. Brady, Secretary of the Treasury, from National Wildlife Federation et al. (signed by Barbara Bramble on behalf of Bruce M. Rich of Environmental Defense Fund, James N. Barnes of Friends of the Earth, Glenn T. Prickett of Natural Resources Defense Council, Hope Babcock of National Audubon Society, and Kiliparti Ramakrishna of the Woods Hole Research Center), July 6, 1990.

21 The NGOs preferred that funds be provided in the form of parallel financing via USAID—advice which was followed by the administration. See, for example, letter to Mr. Stephen P. Farrar, Special Assistant to the President, from Natural Resources Defense Council et al., October 31, 1990.

22 The Northern NGOs watched carefully as the agencies began preparations. They favored a strong role for UNEP and STAP and preferred the allocation of resources to wait until scientific criteria were established. They were highly critical when the agencies quickly developed two large tranches, which they felt had paid inadequate attention to public participation. At times, however, the NGOs also found reason to congratulate the GEF on creating a more open process of discussion than was the norm with standard World Bank procedures. See, for example, "Position Paper on the Global Environment Facility," prepared by NGO groups attending the NGO Consultation on Biodiversity Projects within the GEF with the World Bank on September 17–18, 1991.

23 See letter to Mr. Mikko Pyhala, UNEP, from Natural Resources Defense Council et al., January 25, 1991.

24 Closing statement of Wilfried Thalwitz, Chairman of the GEF, at the Participants Meeting, May 1–2, 1991.

25 "Chairman's Concluding Remarks," by Wilfried Thalwitz, Participants Meeting, May 1–2, 1991.

26 PrepCom II met in Geneva from March 18 to April 5, 1991. It was attended by 135 countries.

discussion on these matters was scheduled to take place at the Third PrepCom in August. As it happened, the contours of the debate would become clear before this meeting. In June 1991, the views of developing countries were articulated in the Beijing Ministerial Declaration on Environment and Development. This declaration stated that poverty was the root cause of environmental problems in developing countries and urged UNCED to adopt a broad focus on "development issues related to environment." To deal with problems of immediate concern to developing countries, they suggested that

> a special Green Fund should be established to provide adequate and additional financial assistance to them. This fund should be used to address problems which are not covered by specific international agreements, such as water pollution, coastal pollution affecting mangrove forest, shortages and degradation of fresh water resources, deforestation, soil loss, land degradation and desertification. It should also cover the costs of the transfer of environmentally sound technologies and the costs for building up national capabilities for environmental protection and for scientific and technological research. This Fund should be managed on the basis of equitable representation from developing and developed countries, and should ensure easy access for developing countries.[27]

With regard to the global environmental issues under negotiation, they stated that "every international legal instrument should include provisions for adequate, new and additional funds." Adequate in this context meant sufficient funds to cover the incremental costs to meet relevant commitments, including prevention, mitigation, and cumulative effects of past actions.

Shortly after the Beijing meeting, the INC for the biodiversity convention considered options for a financial mechanism. UNEP, in its capacity as host for the CBD Secretariat, had prepared a paper for consideration by the INC. After describing a host of existing financial mechanisms, including the GEF, the Secretariat concluded that "two feasible alternatives can be identified: A Multilateral Trust Fund (MTF) or an Independent Financial Corporation..."[28] The proposed MTF would be hosted by UNEP and implemented jointly by UNEP, UNDP, FAO, and IUCN in close cooperation with the World Bank. In addition to joint management—"utilizing the comparative advantage of each"—the MTF also resembled the GEF in that it would be a three-year pilot program, emphasizing "selective" and "cost-effective" implementation. It differed from GEF in that it would be administered by a Secretariat to be located in UNEP and would have an Executive Board similar to that of the Interim Multilateral Ozone Fund. The total amount of funding was to be decided by the contracting parties, and contributions would be assessed based on the UN scale. The fact that UNEP, a partner agency, did not consider the GEF to be a feasible alternative for funding of the Convention indicates the degree of its discontent with the GEF.

A similarly critical message came through when nearly 150 countries met in Geneva for the Third UNCED PrepCom from August 12–September 4, 1991. In addition to criticizing the governance structure of the GEF, some delegates were unhappy with its limited mandate, the system of voluntary contributions, and the role of the World Bank. The G-77 and China repeated the call for a new "Green Fund" for environmental problems not covered by the conventions and for separate funds for each of the latter. The UNCED Secretary-General was given the difficult task of preparing concrete proposals for the next UNCED session to be held the following spring.

At this stage, it was apparent that the future of the GEF would be linked to developments at UNCED. And given the critical voices raised by developing countries and NGOs in the preparatory processes, the pressure was on for alternative arrangements. Many Participants in the GEF recognized that the pilot facility, which they had negotiated less than a year ago, was not in accord with political realities.

D. Considering Restructuring

The implementing agencies had come progressively but separately to the same conclusion. The growing realization that the GEF's structure might have to be modified coincided with a low point in agency rela-

27 See "Beijing Ministerial Declaration on Environment and Development." (A/46/293) It was adopted by 41 developing countries in Beijing on June 19, 1991.

28 See "A note on options for a financial mechanism to meet the requirements of a convention on biological diversity," UNEP/Bio.Div/WG.2/2/3/4, April 30, 1991. The note was considered by the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity at its third session in Madrid, June 24 to July 3, 1991.

tions. In addition to struggling with the overdue Interagency Agreement, the World Bank and UNDP had to work out their differences on operational issues. UNDP had strong interests to protect in the GEF as well as in the UNCED process. It was keen for the two to be better connected—which would also seem to strengthen UNDP's hand vis à vis the World Bank.

UNEP felt alienated from the GEF process and expressed its dissatisfaction with the GEF. At the November 1990 Heads of Agencies Meeting, Mr. Tolba directed that any trust funds under the present or future conventions must be kept separate from the GEF as autonomous trust funds. He also voiced his view that the issue of desertification should be covered by the GEF mandate.

It took a longer time for the World Bank to acknowledge the way the wind was blowing. It followed UNCED's progress from the sidelines, but compared to its partner agencies, it had a less specific stake in the process. It also had less of a constituency in UNCED through which its preferences could be voiced. The people involved with the GEF watched UNCED with growing interest and concern as dissatisfaction with the pilot facility increased.

As early as the first Participants Meeting in May 1991, the question about the future structure of the GEF was raised. At this point, however, the momentum for changes had not yet taken hold. In response to the concerns, the Chairman of the GEF, Mr. Wilfried Thalwitz, stated that governance was "a matter of fine tuning." He told the Participants that he considered

> maintaining a 'loose' structure, which allows for mid-course correction, modification and improvements as we learn, to be fully appropriate. It would, in my mind, be inappropriate to construct a more formal and legal system of governance with all the attendant problems that could bring with respect to voting rights, formal procedures, and jurisdictional responsibilities.[29]

During the summer of 1991, pressure for change increased, and by early fall, GEF staff were convinced these demands called for action. The Administrator attended PrepCom III in August. He returned convinced that GEF and the UNCED process were inextricably linked and mounting political pressure to change GEF's governance system was unavoidable. Such changes, he predicted, would be needed before the end of the present program.

The World Bank was now entering a process of rethinking. It was accompanied by a changing of the guard in Bank leadership of the GEF. The new President of the World Bank, Mr. Lewis Preston, began his term by reorganizing the Bank in the fall of 1991. In the reshuffle, the incumbent GEF Chairman, Mr. Thalwitz was made Vice President of Europe and Central Asia. His replacement as Chairman of the GEF was Mr. Mohamed El-Ashry. Mr. El-Ashry had joined the Bank as Director of the Environment Department in May 1991, only a few months earlier. Previously, he had been a Senior Vice-President at the World Resources Institute and had served as an adviser both to UNDP and to UNCED. These recent experiences had sensitized Mr. El-Ashry to the political context beyond the World Bank.[30] Although he would not be confirmed as the GEF Chairman until November, Mr. El-Ashry took charge of World Bank strategy on the GEF from September onwards.

NGO Criticism

The second GEF Participants Meeting was scheduled from December 4–6, 1991.

By this time, most parties agreed that modifications of the GEF were needed, and an extra day was added to discuss that evolution.[31] This initial exploration started a discussion of governance arrangements that

29 Statement of the Chairman to the GEF Participants Meeting in Washington, D.C., May 1–2, 1991.

30 See, for example, "A Proposed Direction for the UNCED Agenda," by Mohamed T. El-Ashry in Network '92, published by The Centre For Our Common Future and IFC, Number 8, July 1991.

31 The second tranche of projects was presented at this meeting and much of the discussion focused on the proposed projects. Overall, the Participants were more content with this tranche, although five projects were "returned" to the agencies for review. Approximately 50 percent of the proposed projects were from UNDP. The Participants considered this percentage too high and set an indicative range of 70 percent investment projects and 30 percent technical assistance projects. The Participants approved the proposal to establish a Small Grants Programme in UNDP. STAP presented their criteria including target percentages for the different areas.

would continue for more than two years.[32] The way the meeting was conducted was indicative of the evolution that was to follow. One issue arose when the delegate of Pakistan took the floor and spoke on behalf of the developing countries. It was pointed out to him that in the past countries had represented only themselves in the GEF. While speaking on behalf of a group is common practice at the UN, a number of people felt that continuing this tradition in the GEF would lead to an undesirable polarization between developed and developing countries. However, given the division of interests on financial matters, a split along North-South lines was unavoidable. With the increasingly close connection between the GEF and UNCED—where the G-77 and China already negotiated as a group—it was only a matter of time before this pattern was established in the GEF.

The consultation with NGOs before the December meeting was another innovation that was to become a standard practice. At the consultation one day prior to the official meeting, the NGOs voiced their displeasure with the GEF and the system of which it was a product. The NGO summary of their internal discussion began: "The global environmental crisis is inextricably linked to current economic and development policies which, by undermining local livelihoods, impoverish the many in the interest of the few."[33] "In particular," it was argued, "it fails to address those international economic relations and institutions that cause a large part of the Third World's environmental and developmental problems."[34] Furthermore, they found that the GEF "diverts attention from the more critical need to restructure the global economy, transnational corporations, and global financial institutions like the World Bank."[35]

These demands that the GEF should act as the "David" against the "Goliath" of the entire international economic system can only be understood in the larger context of the political debate at this time. The all-encompassing critique was related to the hope that a large-scale, generic Green Fund could be established at terms favorable to developing countries. There was suspicion that the GEF—in the hands of the World Bank—might evolve as a substitute for such a fund. "Endorsement of the GEF as the post-UNCED financial institutional mechanism would run counter to demands for the democratization of international institutions, which is the call of NGOs and even some governments at the Third Preparatory Meeting."[36] In this light, the GEF looked like a tactic to prevent the creation of a Green Fund.

For a time, the complete rejection of the GEF obscured the more moderate criticism that a number of NGOs advanced. Alongside the more common criticisms—the role of the World Bank, lack of transparency, and the call for public and NGO participation—the NGOs were among the first to point out some fundamental weaknesses that the Participants would later pick up on. Those that accepted that the GEF pilot phase was an exploratory venture to learn via practice repeatedly noted the absence of an evaluative mechanism where lessons could be systematically evaluated. Those that did not accept the exploration/demonstration rationale consistently underlined the importance of taking time to develop adequate frameworks in which projects could be systematically developed and assessed. This strategic component would take on an added importance to all involved as discussions on a permanent facility began. A number of other more specific criticisms by NGOs

32 A central issue at the meeting was whether a future GEF should consist of multiple "pots" within an overall umbrella structure or whether a single fund should be established. The Nordic countries could support an umbrella model that would enable individual funds for different purposes, which would be managed by the GEF. Other countries, e.g., France and Japan, were of the opinion that an integrated fund would be most efficient. The U.S. was strongly against separate funds and argued that the GEF should consist of a "unitary fund" without earmarking any kind of subfunds. The Chairman interpreted the debate to find support for a unitary fund. See, for example, unclassified telex report (corrected copy) from U.S. State Department to U.S. Embassies from Participants Meeting, December 4–6, 1991.

33 "Summary of Discussion, NGO Meeting on the GEF: Geneva December 2."

34 Ibid.

35 "The Global Environment Facility (Part 3): Perpetuating Non-Democratic Decision-Making," by Ms. Vandana Shiva. It is part of the set of background papers prepared by Third World Network (TWN) for UNCED.

36 "The Global Environment Facility (Part 1): The GEF Should Not Be a Model for Post-UNCED Financial Arrangements," by Chee Yoke Ling, as part of TWN's background papers for UNCED.

were to be addressed later, such as the overly formal concepts of incremental cost and absence of social scientists on the STAP.[37]

Options for the Future—February 1992

By early 1992, uncertainty surrounded both the future of the GEF and the financial mechanisms of the conventions and Agenda 21. Decisions in each forum clearly depended on decisions made in others. The conflicting preferences of developed and developing countries were now obvious. In both, preferences were intimately connected to issues of governance. Developing countries favored settings where decisions on funds were made on a one-country, one-vote basis. Developed countries wanted funds to be placed in fora that put the main control of funding levels and allocation in the hands of contributors.

The financing of Agenda 21 emerged as a central issue at this time. The Secretary-General of UNCED had published figures on the amounts needed to finance environmental obligations. It was estimated that developing countries would need as much as USD 125 billion annually to introduce the measures likely to be approved at UNCED.[38] This figure translated into a USD 75 billion increase in development assistance. These figures provided the basis for the discussion on finance planned for the UNCED PrepCom to be held in New York the following month. The developing countries, with support from NGOs, still advocated the establishment of a new, large, generic Green Fund for financing Agenda 21.

The OECD countries—with the important exception of the United States—conceded that additional funds for Agenda 21 were needed, but considered the amounts published by UNCED to be unrealistic. The idea of a Green Fund found no support at all. OECD countries were not willing to create a new institution for this purpose nor to accept a setting where contributors represented a minority in the decision making on funds. Instead, they advocated "the use of existing mechanisms for this purpose, in particular the Global Environment Facility."[39] They pictured a modified GEF that was to remain a mechanism for global problems, but the mere mention of the GEF in this context caused confusion about what its mandate would be and whether it would be proposed as a mechanism for funding parts of Agenda 21.

The other issue was how the conventions should be financed. The developing countries preferred decision making on funds within the conventions, where they are the majority. They also preferred, as the UNEP proposal for the MTF suggested, the total amount of funding to be decided by the conventions and assessed on a UN scale. It is not difficult to imagine why the developed countries resisted such proposals. The OECD countries preferred the GEF to become "the comprehensive funding mechanism to help developing countries meet their obligations under the new environmental conventions."[40] Some countries wanted the GEF to handle all practical aspects related to funding while others were in favor of establishing financial mechanisms under the conventions and assigning certain management responsibilities to the GEF. These issues were on the agendas at the February meetings of the INCs for the Convention on Biological Diversity as well as the Framework Convention on Climate Change.

In this politically charged period, the GEF Participants met in Geneva on February 14, 1992. As requested, the Administrator's Office had prepared an Options Paper. It outlined three main options for the future: (i) continuing the existing arrangements for another 3 to 5 years; (ii) creating a modified and incrementally evolving GEF; or (iii) creating a full-blown independent institution.[41] Since there was no solid political support for either the first or last alternative, it was apparent almost from the outset that option two would prevail. The questions were how the GEF should be modified, and given the uncertainty surrounding funding of Agenda 21, what activities the GEF should cover.

The issue of scope was hence high on the agenda at the February meeting. Should the GEF be expanded beyond the four focal areas, and should national envi-

37 See, for example, "NGO Statement to the GEF Special Participants Meeting in Geneva," December 12, 1992.

38 Financial Times, February 14, 1992.

39 Quoted in Network '92, August 1991.

40 Ibid.

41 See "Future Evolution of the Global Environment Facility: Issues and Options" draft as of January 24, 1992.

ronmental plans be eligible for funding? Behind these questions lurked ramifications for how the GEF should relate to Agenda 21. If the GEF were to finance significant parts of Agenda 21, the concept of incremental cost and the definition of the four focal areas would have to be relaxed or abandoned. The GEF Chairman explained his views in an article around this time. He wrote that "several countries—developing and developed—have called for the GEF funds to deal with national environmental problems such as lack of clean water, or regional blights such as desertification....The best response, however, is probably to provide assistance through existing bilateral and multilateral development programmes."[42]

The February 1992 meeting reconfirmed that, for the time being, the GEF's basic mission was "to provide concessionary and additional funding of the incremental costs for achieving global environmental benefits."[43] While it was not agreed exactly what was meant by additional, incremental, or global, funding of the main parts of Agenda 21 were ruled out. The GEF would not become the Green Fund the developing countries desired. The meeting also decided that for the present the GEF should be limited to the four thematic areas. However, the Chairman's report emphasized that the scope of the GEF "should remain flexible so that it can accommodate the possible financing arrangements for the global environmental conventions as they develop, as well as other global initiatives that may arise from UNCED and Agenda 21."[44] By keeping the global mandate, tension regarding GEF's role in Agenda 21 was reduced. The focus returned to the relationship between the GEF and the conventions.

The Chairman interpreted the message from the GEF Participants as follows:

> The GEF could function as the unitary funding mechanism for global environmental conventions that are currently being negotiated. In that regard, it is the desire of the Participants to signal to the climate and biodiversity negotiators that, in its new form, the GEF will be ready to serve as the financing mechanism for the global conventions if the negotiators so desire.[45]

It remained to be seen, however, if the GEF could be modified in such a way as to make it the preferred mechanism for funding of the conventions.

Deadlock on Finance

This message was conveyed to the INC on Climate Change later the same month.[46] Despite a well-timed announcement by the United States of a USD 50 million contribution to the core fund of the GEF, no decision was made by the INC. A non-committal statement simply noted the "important gains derived" from ensuring that discussions "serve the objectives of the prospective global conventions."[47] Referring to the GEF, the Chairman of the INC, Mr. Jean Ripert, concluded the meeting by saying, "I have to state that there is no understanding between developing and industrialised countries whether we use these facilities as the mechanism for transferring assistance, or if we should have a separate fund. That remains an open question."[48]

The following month, in March, the discussions on financial resources at the UNCED PrepCom ran aground. Developing and developed countries could not agree on an overall vision for financing Agenda 21, and no text was approved on this matter. It was becoming increasingly clear, however, that funds would come from a number of sources rather than a new, generic Green Fund.[49] As the Green Fund idea lost ground, the discussion turned to the underlying issue of the level of overseas development assistance (ODA). The Nordic and the developing countries joined forces to advocate the notion that all developed

42 "The GEF and Its Future," by Mohamed T. El-Ashry in Network '92, February 1992.

43 See "Chairman's Summary of GEF Participants Meeting," Geneva, February 14, 1992

44 Ibid.

45 Ibid.

46 See "Statement to the Fifth INC on a Framework Convention on Global Climate Change," by Mohamed T. El-Ashry, New York, February 22, 1992.

47 "Chairman's Report to the GEF Participants Meeting," Washington, D.C., April 1992.

48 Quoted in "Environment: U.S. contribution called window-dressing," SUNS, March 3, 1992.

49 This was indicated, for example, in the "Introductory Notes on Financial Resources and Mechanisms," by the Vice Chairman, Mr. John Bell, on March 3, 1992.

countries should commit to the UN target of 0.7 percent of GDP, but this did not receive sufficient support. The meeting ended disappointingly with the developing countries going back to their original position in favor of a generic fund.

The failure at the PrepCom would make for a very busy month preceding Rio. In late April and early May, four important meetings were scheduled, back to back, each providing an opportunity to escape the deadlock. First, there was a meeting of developing countries in Kuala Lumpur, then the GEF Participants Meeting, followed by meetings in the two INCs. Failure to agree in these fora would mean that all financial matters would have to be resolved at the Rio meeting.

Developing countries had the opportunity to make a collective stand at the Second Ministerial Conference of Developing Countries on Environment and Development. The meeting took place in Kuala Lumpur from April 26 to 29. Ministers from 55 developing countries made it plain "that agreement on implementation of Agenda 21 programmes will depend on the availability of adequate, new and additional financial resources and the transfer of technology to developing countries on preferential and concessional terms."[50] "This funding," they stated, "should be provided in addition to, and separate from, Official Development Assistance (ODA) target commitments by developed countries. A specific and separate fund for the implementation of Agenda 21 should be established." With regard to location, administration, and operational activities, "all possibilities could be explored" provided governance was transparent, democratic, without conditionalities, and according to the priorities and needs of developing countries. As for the two global environmental problems under negotiation, the Declaration repeated the call for separate funds to be established under each convention.

References to the GEF were conspicuously missing in this declaration. Paradoxically, this testified to the importance and controversy relating to the GEF at this crucial time. The developing countries strongly disagreed on the potential role of the GEF. A majority was firmly against the GEF, but Mexico, Venezuela, and Colombia argued that the GEF could serve as an appropriate financial mechanism, and put out a joint statement to that effect.[50] Brazil, while not willing to explicitly embrace the GEF, wanted to signal flexibility by sending a message to the GEF meeting getting underway in Washington, D.C., but given the controversy, no such message came through. When the meeting in Kuala Lumpur closed, the GEF Participants Meeting had already begun.

E. Beyond the Deadlock

The ball was now in GEF's court. The April 29-30 meeting was the last chance before Rio to outline the future of the GEF in such a way that made it acceptable as a funding mechanism for the conventions. Without the endorsement of the conventions, the development of a post-pilot GEF would be seriously hampered. Moreover, the GEF was by now an important ingredient in the UNCED discussions. If it were rejected as a funding mechanism for the conventions, the possibility for agreement on finance at Rio would be significantly reduced. And because finance was an important component in securing the UNCED agreements, the potential setbacks could be severe. The stakes were therefore high when the GEF Participants sat down to consider *The Pilot Phase and Beyond*, a paper intended as a blueprint for restructuring the GEF.

Principles for Restructuring

The issue of scope remained high on the agenda. The February meeting had reconfirmed the GEF's basic mission as a mechanism to fund global issues in four focal areas, but had retained some flexibility on the interpretation of the mandate. Two related issues called for clarification. One was how stringently the focal areas should be defined; the other was how the GEF should relate global concerns to national priorities.

With regard to the four thematic areas, developing countries strongly preferred a wider scope, and argued—along with UNEP—that desertification should be covered in the future mandate. In contrast to the original focal areas, land degradation was seen as an example of a global issue arising from the needs of developing countries, in particular those in Africa. As it became increasingly likely that the next large envi-

50 Kuala Lumpur Declaration on Environment and Development," signed at the Second Ministerial Conference of Developing Countries on Environment and Development, April 29, 1992.

ronmental convention would focus on desertification, its political viability in the GEF increased.[51] However, most OECD countries were skeptical about expanding the pilot phase definition. They viewed desertification as a vaguely defined area and feared its potential to draw big portions of the sustainable development agenda into the GEF domain.

This divisiveness led the Chairman of the GEF and the heads of the three agencies to look for a compromise. An opening came in consultations prior to the April Participants Meeting. A number of developed countries indicated that they could support the inclusion of land degradation if it did not mean abandoning the four original areas or the global mandate. At a meeting of the heads of agencies, the GEF Chairman introduced a compromise formulation, which was presented to the Participants at their April meeting. They approved the statement: "Land degradation issues, primarily desertification and deforestation, as they relate to the focal areas of the Facility, would be eligible for funding."[52] This compromise was important in ensuring the support of some developing countries. It also paved the way for bringing UNEP more firmly on board. UNEP, which had consistently argued for including land degradation issues, interpreted the compromise as a "fundamental move" to meet the demands of developing countries.[53]

A related issue was that "global" was a contestable concept. As UNCED highlighted the connection between environment and development, criticism of a strict division between national and global priorities mounted. The challenge was to find an approach that enabled a stronger connection with national strategies, but without eroding the global mandate. No convenient conceptual distinction was at hand, which made this an issue to be resolved politically. It is worth noting that all parties agreed on the necessity of integrating global and national concerns in practice; the controversy was how funding for environmental projects would be divided among the GEF, domestic sources, and regular development assistance channels. The OECD countries preferred a fairly strict definition of the global mandate, which they regarded as the fundamental rationale for the GEF. In their view, the concept of incremental costs was an essential analytical tool to limit the number of potential projects and fulfill the mandate. As contributors, they were also worried about the increased demand for funds that would result if national and global components could not be financially distinguished. Within this general consensus, some OECD countries, such as the Nordics and the Dutch, were in favor of a stronger emphasis on national concerns, while others maintained a more restrictive view.

The developing countries were pushing for a far-reaching change. They were critical of a concept of incremental cost that enforced what they saw as an artificial division between global and national environmental problems. Instead they proposed that the "GEF should provide grant, concessionary and additional funding of the incremental cost for national and regional projects and programmes which integrate developmental and environmental concerns."[54] If the mandate was defined this way, almost all sustainable development projects would be eligible for GEF funding, and the GEF would become more like the Green Fund the developing countries were pushing for. Their ambivalence toward the GEF was quite apparent at this time. On the one hand, they considered the GEF an unsuitable vehicle for additional funding and argued instead for a Green Fund to finance Agenda 21. On the other hand, they simultaneously pushed hard for an expansion that would enable GEF to fund large portions of Agenda 21. It is hard to to see these two preferences as compatible, and it raises the question of whether developing countries' goals on this issue were not at cross-purposes.

Among the agencies, UNDP was strongly in favor of closer integration with national strategies. This preference accorded with its mandate in the GEF. As UNDP was the agency responsible not only for coordinating

51 "Third World reaches agreement after tough talks," by K. T. Arasu, Reuters, Kuala Lumpur, April 28, 1992.

52 Principle II in "The Pilot Phase and Beyond," Working Paper Series, Number 1, the Global Environment Facility, May 1992.

53 "UNCED: GEF an Inadequate Institution as Finance Mechanism," by Vandana Shiva, TWN/SUNS, May 5, 1992.

54 "Preliminary Response of the Government of Pakistan to the GEF Administrator Office's First Draft on the Future Evolution of the Global Environment Facility Issues and Options," February 4, 1992. This proposal was supported by other developing countries at the meeting on February 14, 1992.

national plans and policies, but also for integrating environmental and developmental goals, it was to be expected that UNDP wanted this area strengthened. It was not expected, however, when UNDP, in a highly irregular move, attempted to gain support for this position by contacting Participants directly.[55] UNDP's appeal stated that the links to the conventions were important, "but equally important are links to in-country sustainable development strategies and action plans based on national priorities."[56] Direct lobbying of Participants was tantamount to going public with internal difficulties; thus it caused Participants to complain in irritation to the GEF administration.

The GEF administration was in fact favorably inclined toward relaxing the mandate to allow for better integration with regionally and nationally defined priorities. Since becoming Chairman, Mr. El-Ashry had noted repeatedly that one of the GEF lessons was the inability to distinguish clearly between global, regional, and local problems. At the December meeting, he had explained that "the Facility cannot operate independently, isolated from other important environmental activities and divorced from national and regional strategies for sustainable development."[57] He wanted this view to be reflected in the modified GEF, but with an eye to political realities.

The result, reflected in the final version of the paper *The Pilot Phase and Beyond*, was a moderate position.[58] One of the guiding principles stated that the GEF "would fund programs and projects which are country driven and consistent with national priorities designed to support sustainable development."[59] The paper also underlined that "there are many instances where it is difficult to distinguish global and national environmental benefits, and therefore some degree of flexibility in interpreting such benefits is required."[60] The multiple references to national priorities and policies in the paper clearly increased the GEF's acceptability to a broader group. At the same time, it paved the way for a wider set of interpretations of the mandate and allowed people to formulate very different visions for the future GEF.

The meeting formally established what had been known for some time: the GEF would be restructured for the post-pilot phase.[61] The paper outlined the basic principles that would guide the restructuring. It also served the necessary purpose of widening GEF's appeal in a politically sensitive time and context. The paper stated that universal membership was "important to the GEF's success" and the facility "must be transparent and accountable to contributors and beneficiaries alike."[62] It would take long, hard negotiations before the principles were translated into a specific governance system, but this "statement of intent" set a general direction for the restructuring process. The most important short-term result, however, was that agreement on the GEF convinced negotiators in the climate change INC that a restructured GEF held considerable merit. This task was helped in some measure by the fact that a number of countries were represented by the same individuals at the GEF meeting and the INC deliberations on financial issues. The INC negotiators sat down to begin their deliberations the day after the GEF meeting ended.

Rio and the Conventions

On May 9, 1992, at the last meeting before the Rio Conference, the INC for the Framework Convention on Climate Change (FCCC) decided to designate the GEF as the interim operator of the convention's financial mechanism. Article 21 stated that the GEF "shall be the international entity entrusted with the operation of the financial mechanism ... on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal..."[63]

55 Letter signed by Luis Gomez-Echeverri, Manager, Environment and Natural Resources Group, UNDP, April 16, 1992.

56 "The Global Environment Facility (GEF): Beyond the Pilot Phase and its Post-UNCED Evolution," UNDP, New York, April 9, 1992.

57 "GEF—Discussion Points for the Future Evolution Session of the Participants Meeting on Friday, December 6, 1991."

58 The final version of the paper was published as GEF Working Paper 1 in May 1992.

59 See "The Pilot Phase and Beyond."

60 Ibid., p. 2.

61 Since the meeting from April 29–30, 1992, was fully devoted to issues related to the restructuring, an additional meeting was scheduled to discuss the Third Tranche work program. The extra meeting took place in Washington, D.C., on May 19, 1992. Discussions were based on the "Report by the Chairman to the April 1992 Participants Meeting," especially Part II.

62 See "The Pilot Phase and Beyond."

63 "Framework Convention on Climate Change," INC/1992/1.

The decision in the FCCC created such momentum that, on May 22, the INC of the Convention on Biological Diversity used very similar language and conditions in its decision to embrace the GEF on an interim basis.[64] Despite the cautious and conditional terms both conventions used to approve the GEF, it was a significant step. It ensured that the restructuring of the GEF would proceed as intended, and it reduced the risk of failure in Rio.

The Rio Earth Summit (or the United Nations Conference on Environment and Development [UNCED]) was held in Rio from June 3 to June 14, 1992. It was attended by over 120 heads of state, 8,000 delegates, and 3,000 accredited NGO representatives. In the words of one analyst, it revealed "a new geometry of international relations."[65] While most of the Rio agreements had been negotiated beforehand, some sections of text were still in brackets when the conference began. Of these, finance proved the most difficult to resolve.

As the conference began, the developing countries had not formally abandoned their demand for a Green Fund. But they knew that the developed countries refused to even consider the idea, and no substantial proposal had been produced. This supports the perception that the developing countries used the Green Fund issue as a bargaining chip to ensure that funding of Agenda 21 was made available through other sources. Their "real" demand was instead for "new and additional" financial resources. If this demand went unfulfilled, there was a risk that the developing countries would not support the UNCED documents.

With the conspicuous exception of the United States, most developed countries agreed, at least in principle, that environmental conditions mandated new and additional funds. Accordingly, a number of leaders from the North announced their intention to increase their environmental contributions. They particularly stressed the need for funding that addressed global environmental problems. However, the U.S. delegation was instructed not to make any commitments for new or additional resources. The refusal of the United States to concede even the need for additional resources was serious as it spelled problems for future attempts to mobilize resources in a burden-sharing context.

In this precarious situation, the President of the World Bank, Mr. Preston, made an important statement. In a meeting of the Development Committee on April 28, the attending ministers had "agreed that consideration should be given to a special 'Earth Increment' to the tenth replenishment of the International Development Association (IDA-10)."[66] This allowed Mr. Preston to announce that he would seek to mobilize such an Earth Increment as part of IDA-10. In order to be additional, however, the amounts raised would have to be in excess of USD 18 billion, which was the real-terms equivalent of IDA-9.

Added to Mr. Preston's statement, the agreement on the GEF helped defuse the situation. Many leaders from the North stated their intent to substantially increase funding at the next GEF replenishment. The importance of more funds to the GEF was underlined in Chapter 33 of Agenda 21. It stressed that the GEF should ensure "new and additional financial resources on grant and concessional terms, in particular to developing countries." Furthermore, the GEF should ensure "predictability in the flow of funds by contributions from developed countries taking into account the importance of equitable burden-sharing." [67] The support for the GEF in Agenda 21 was, like in the conventions, conditional on an appropriate restructuring.[68]

64 "Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity," Nairobi Final Act, May 22, 1992. Article 39 calls for appropriate restructuring of the GEF, and Article 21 states that the financial mechanism of the Convention is to operate within a democratic and transparent system of governance.

65 "Negotiating Survival: Four Priorities After Rio," by Richard Gardner. New York: Council of Foreign Relations Press, 1992, p. 7.

66 "Communique" from Development Committee Meeting, April 28, 1992.

67 "Chapter 33: Financial Resources and Mechanisms," Agenda 21.

68 Paragraph 33.14 (a)(iii) of Agenda 21 lists a number of requirements that the restructured GEF should fulfill. The GEF is called upon to, inter alia, "Encourage universal participation; Have sufficient flexibility to expand its scope and coverage to relevant programme areas of Agenda 21, with global benefits, as agreed; Ensure a governance that is transparent and democratic in nature, including in terms of decision making and operations..."

Taken together, the many positive statements by government leaders, the Earth Increment to be sought as part of IDA-10, the agreement on the GEF, and the possibility of initiatives in the United Nations added up to a financial "package." It amounted to a vague counteroffer to the equally vague Southern preference for a Green Fund. Following tough negotiations on financing, it proved sufficient to persuade the developing countries that some "new and additional" funds would indeed be provided for the conventions as well as for the sustainable development envisaged in Agenda 21. In the minds of many delegates from developing countries, this future provision of new and additional funds was part of the "deal" struck at Rio.

Financial Disappointment After Rio

Following UNCED, the developed countries did not live up to the pledges of increased financial resources made at Rio. In July, the G-7 held a meeting without discussing the matter of additional financing. During the fall, it became clear that IDA-10 would just barely reach the level of IDA-9. This level was insufficient to permit the Earth Increment, which was contingent on the provision of additional funds. No significant UN initiatives came through. The GEF was thus the only remaining potential source for additional money as a result of Rio. After the letdown on additional funds in other fora, the developing countries became determined to achieve a different outcome in the context of the GEF. The level of replenishment for the GEF became a test of the commitment the developed countries spoke of in Rio.

The GEF now became the focus of attention. The GEF administration was settled with the task of developing the agenda for restructuring in collaboration with the implementing agencies. Again, the agencies were being asked to cooperate on matters concerning the rules of the game. And, as any deviation from the pilot phase arrangements had positive or negative consequences for the individual agencies, it was not long before the interagency rivalry resumed. In developing the various options papers for the Participants, the different priorities of the agencies would play themselves out on issue after issue.

The Administrator's Office—now frequently referred to as the Secretariat—had emerged from within the World Bank and undoubtedly had its primary loyalty to this institution. But with central responsibility for guiding the restructuring, it was in the GEF's self-interest to strike an appropriate balance between the various interests. Given repeated questions about the legitimacy of the World Bank's role in the future GEF, the double task of acting as an honest broker while defending the interests of the Bank became a difficult challenge.

During the fall of 1992, the preparations for the restructuring process began. The task ahead was to translate into practice the principles already agreed to at the GEF meeting in April and at UNCED in June. These agreements on principles provided the foundation for the upcoming negotiations, but they could be—and were—interpreted in different ways. UNCED had laid bare the fundamental divisions between the North and the South. Now, this struggle was carried over and continued in negotiations for the GEF. From the start, the two sets of actors seized on different aspects of the earlier agreements. The South emphasized principles such as universal participation and democratic decision making. From their perspective, the future facility needed to give concrete expression to these values in order to attain legitimacy. The North instead stressed that, if the GEF was to succeed, such values needed to be balanced by pragmatic considerations like efficient decision-making procedures and cost-effective operations. In the upcoming negotiations, these different emphases would emerge time and again, on issue after issue.

3 Negotiating a Restructured and Replenished GEF

Abidjan in December 1992

The restructuring process was kicked off in Abidjan in December 1992. The meeting became an initial testing ground for reshaping the relationship between the developed and developing countries in the GEF.[69]

Universal Membership

The goal of universal membership in the GEF had been an important part of both the April and UNCED agreements. In order to make universal participation possible, the Abidjan meeting decided to abandon the mandatory membership contribution of SDR 4 million. The decision represented an easy first step toward practical fulfillment of the agreed principles. In the coming months, this new policy proved to be an effective means to increase participation.

It is interesting to compare the thinking behind this decision with the original rationale for making participation conditional on a minimum contribution. In 1990, the "fee" was seen to foster ownership and help do away with the recipient-donor relationship that characterized North-South interactions in other financial fora. Two years later, concern for the North-South relationship motivated the opposite policy. The fact that the decision at the Abidjan meeting was uncontroversial is evidence of how much the winds had turned in the two years since the pilot facility was created. The earlier agreement reflected the notion of partnership as defined from a financial perspective; at Abidjan, the same concept was defined from a political viewpoint.

Legal Establishment

It was clear from the outset that the informal arrangements that had characterized the pilot facility would give way to a new, more formal governance system. But at the same time, the Participants made clear that they did not want to create a full-blown formal institution. The question of legal status arose in this context. What would be the source of the new GEF's legality, and what would be the consequences for governance and operations?

The establishment of the pilot facility by way of a World Bank resolution had not been controversial

69 In addition to the customary "Report by the Chairman," two draft papers were distributed to the Participants for the Abidjan meeting. These were (i) "GEF—Legal Framework" draft dated November 6, 1992, and (ii) "GEF—Decision-Making in the Participants Assembly" draft dated November 9, 1992. Both drafts were sent out on November 9, 1992, along with a briefing note on "The GEF and Its Future Links with the Conventions on Climate Change and Biodiversity."

among the Participants at the time.[70] Not only had the GEF originated from a proposal to the World Bank, but the Bank had led the negotiations to a speedy completion. Additionally, establishment by way of resolution was seen as an essential legal underpinning of the informal governance arrangements by which the pilot facility was managed. The exploratory character and the three-year pilot phase were both crucial features for reaching agreement on the facility. Then, a more formal and time-consuming procedure would have been incompatible with the purpose of the pilot facility.

This time the situation was different. The purpose was no longer to create a pilot facility, but to find an appropriate form for a permanent facility. At various times, discontent with the multiple and weighty roles of the World Bank had led a number of Participants, the UN agencies, and the NGO community to argue that the GEF should be established independently of the World Bank. Therefore, it was controversial when a paper presented at the Abidjan meeting proposed that the restructured GEF be established by the same procedure used for the pilot phase. The paper asserted that a World Bank resolution would "allow for speedy implementation of the restructuring of the Facility without the need for negotiation of an international agreement whose ratification by participating States would be lengthy..."[71]

At the consultation before the meeting, NGOs expressed their displeasure with the central legal role assigned to the World Bank.[72] Their views were echoed at the meeting by the representative of Malaysia, who stated that the "points made by NGOs are in complete consonance with the views of the countries in the South."[73] He went on to say that these countries wanted decisions on legal status (and governance) delayed until participation became universal.[74] The OECD countries had a different opinion, although some were flexible on the manner of establishment. Norway, for example, suggested that a Participants Assembly should underwrite the resolution, which then would be adopted by the three agencies. Most OECD countries considered this solution impractical, and a number of them, among them Japan, felt that a World Bank resolution was the only acceptable route.

The support from a number of Participants combined with the lack of agreement on alternatives led the Chairman to conclude that the proposal in the paper was "satisfactory to Participants." He added that "the final document, complete with annexes, must be endorsed by Participants prior to adoption and that any

70 Resolution No. 91–5 was adopted by the Executive Directors of the World Bank Board on March 14, 1991. The resolution, also referred to as the Enabling Memorandum, established the Global Environmental Trust Fund (GET) as the legal centerpiece of the arrangement. It also provided for co-financing arrangements with the GET and for the Ozone Projects Trust Fund. The responsibilities of the World Bank as Trustee was described, including arrangements for contributions to the GET and other funding modalities. The Resolution also covered organizational arrangements, such as reporting requirements to Participants. It stated that the World Bank Executive Directors may amend provisions of the resolution after consultations with Participants. Following its adoption in the World Bank, the Governing Councils of UNEP and UNDP formally took note of the resolution and requested their respective executive directors to undertake the actions necessary to enable the organizations to fulfill their designated roles. The UNEP's approval was via Resolution 16/47 of May 13, 1991. UNDP agreed to the arrangement at their 38th Session of the Governing Council in June 1991. Procedural arrangements for interagency cooperation were signed by all three agencies on October 28, 1991.

71 "Legal Framework" draft of November 6, 1992.

72 See "NGO Statement to the Participants Assembly," Abidjan, December 3, 1992. See also the letter from Third World Network to "Government delegations participating in the GEF meeting in Abidjan, Cote d'Ivoire (December 3-5)" dated November 30, 1992.

73 Quoted from "World Bank under attack at environment meeting," by John Chiahemen, Reuters, December 3, 1992. This view is also confirmed in a note from Ambassador Razali Ismail, the Permanent Representative of Malysia to the U.N., which was used to brief the G–77 on December 15, 1992.

74 See reference to briefing note by Ambassador Razali above. This note stated that the "legal basis for the new GEF should be based on a resolution by a universalized Participants Assembly." On other issues, Ambassador Razali said that consensus was the preferred mode of decision making. In the event that consensus could not be reached, the decision process "should be similar to the Multilateral Fund of the Montreal Protocol, i.e., 50–50 developed-developing countries." Furthermore, it suggested that the Participants Assembly should approve new GEF projects; proposals for a constituency based system should be scrutinized; the GEF Secretariat should be given a separate identity; Chairmanship of the GEF should be on a rotating basis (presumably by Participants); and NGOs should be given observer status.

future amendments would require consensus by the Participants Assembly."[75]

The legal discussion in Abidjan was a prelude to a major interagency disagreement. UNEP had initially been skeptical of a World Bank resolution, but at the Heads of Agency Meeting in October 1992, the Executive Director, Mr. Tolba, agreed to the suggested mode of establishment.[76] At the Abidjan meeting, UNEP therefore stated that "if the procedure set out in the legal paper is agreed to, it is the intention of the Executive Director of UNEP to request UNEP's Governing Council to endorse the establishment of a restructured GEF and UNEP's participation in it at the Governing Council meeting to be held in May."[77]

UNDP, on the other hand, did not waver in its opinion that "it would be advisable to formulate a second option under which the restructured Facility would be established by a method/procedure other than a resolution of the [World Bank] Executive Directors."[78] The UN agencies, which were accustomed to the deliberative approach of the UN system, in which consensus must approach unanimity, also took issue with the Chairman's assessment of a consensus. The Chairman's interpretation followed the decision-making model of World Bank Board where, to avoid voting, consensus may be constituted by a "reasonable" approximation. At the subsequent IC meeting, UNDP voiced its opposition to the interpretation that Participants had agreed to establishment via a resolution in the Bank. In six months time, the issue of legal status would resurface, causing significant friction between staff at the different implementing agencies.

NGO Status

The role of NGO representation in the GEF was on the agenda again. UNCED had established a precedent by including NGOs, and the GEF Participants now had to consider if they would follow suit. During the NGO consultation, NGOs had repeated their demand for observer status, this time receiving stronger support by Participants.[79] While only six countries supported observer status without reservations, a number of delegations said they were ready to accept NGO attendance at the meetings under specified circumstances. As before, however, a few countries remained firmly against NGO presence at the meetings, and no consensus was reached.[80] Instead, the Participants supported a Swedish suggestion to study the matter. The Administrator's Office was asked to produce a paper outlining options for NGO participation.

Evaluation

The NGOs' longstanding request for an evaluation was heeded in Abidjan.[81] Participants enthusiastically greeted Switzerland's proposal for an evaluation that would identify institutional and operational issues needing attention.[82] Time permitting, it would have been more logical to conduct the evaluation before the negotiations began, but this was no longer feasible if the restructuring and replenishment were to be completed before the end of the pilot phase.

A tentative discussion of a possible decision-making system also took place in Abidjan. Preliminary support was indicated for a Participants Assembly with

75 "Chairman's Summary," December 5, 1992.

76 As confirmed in a communication from Mr. Pyhala (UNEP) to the GEF Administrator's Office, November 5, 1992.

77 "Statement to the GEF Participants Meeting, Abidjan, December 1992," by Anthony T. Brough, Deputy Executive Director, UNEP.

78 Communication from Mr. Gucovsky (UNDP), November 5, 1992.

79 "NGO statement to the Participants Assembly," Abidjan, December 3, 1992.

80 Countries in favor of NGO observer status were Canada, Malaysia, Netherlands, and the United States. The following countries indicated their support for the proposal to include NGOs in specified sessions of the meeting: Argentina, Canada, Italy, and New Zealand. Delegations that suggested the possibility of NGO observers once the restructuring was completed included China, India, Finland, and Zimbabwe. However, Côte d'Ivoire, France, Germany, Japan, and the United Kingdom stated that they were against NGOs' presence at the meetings.

81 See, for example, "The Global Environment Facility: Points for consideration at the Participants Meeting in Abidjan (3–5 December, 1992)" by Third World Network, November 30, 1992, and a letter to IUCN members, "Global Environment Facility," by Director General Martin Holdgate, November 11, 1992.

82 "Discussion paper by the Swiss Delegation," to GEF Participants Meeting, Abidjan, December 3–5, 1992.

30 voting constituencies, equally divided between developed and developing countries. Feeling that the restructuring had gotten off to a good start, the Participants optimistically set the course for the year to come. Four meetings were planned: Rome in March, Beijing in May, Washington in September, and Geneva in December.

Rome in March 1993

Replenishment

A first, informal discussion on replenishing the restructured GEF took place on March 3, 1993, to determine how to conduct the replenishment process. OECD countries wanted replenishment to "follow an 'IDA-like' process, and take place separate from, but in parallel with, the restructuring of the GEF."[83] Therefore, only countries that had made a "firm financial commitment to the pilot phase" were invited to this initial meeting.

It was for the invited Participants to decide which countries would be eligible to participate in the formal replenishment meetings beginning in May. The dominant view among OECD countries was that, if all countries participated, the process would become difficult to manage as GEF membership increased. For this reason, participation in the upcoming replenishment was limited to "those countries which intend to make a core fund contribution of at least SDR 4 million."[84] Other Participants "could attend the replenishment meetings as observers." The observer status for non-contributors was a deviation from the IDA model, in which replenishment is an affair for donors. The more open approach selected for the GEF stemmed from the recognition that it was impossible to keep the replenishment "separate" from the restructuring; instead, it was decided the two would "go hand in hand."[85]

The underlying tensions between the North and the South surfaced when the G-77 and the OECD countries declared their respective positions on the link between the replenishment and restructuring processes. The G-77 made it plain that their constructive cooperation in the restructuring process depended on replenishment at a significant level. Conversely, some OECD countries argued that replenishment depended on a satisfactory restructuring.

Restructuring

The growing division between the North and the South became increasingly visible as the Rome meeting moved to focus on restructuring.[86] The G-77 had been successful in influencing UNCED's outcome, and it was now finding its voice in the GEF context. For the Abidjan meeting, a number of developing countries sent delegates from their missions to the UN in New York. In Rome, this shift in representation became more pronounced. The UN representatives had a longstanding working relationship and were used to harmonizing their positions. From the Rome meeting onward, they developed and coordinated G-77 positions on the GEF.[87]

Governance System

The G-77 perspective on restructuring followed from the positions developed at UNCED. Although very specific preferences on the GEF developed in time, most originated in the overarching principle of participation in governance. The desire for influence in the decision-making process, coupled with strength in numbers, led the developing countries to push for a

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83 Letter of invitation to the replenishment meeting in Rome. It was sent to selected Participants by Mr. El-Ashry, February 8, 1993

84 Chairman's Summary of GEF Informal Replenishment Meeting, March 3, 1993. Based on this definition, the following countries participated in the replenishment process: Australia, Austria, Brazil, Canada, China, Denmark, Egypt, Finland, France, Germany, India, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

85 Ibid.

86 The G–77 was at this time made up of 128 countries.

87 Obviously, not all G–77 countries were involved in the GEF process. Instead, the G-77 frequently arrived at their positions in the so-called Group of 28 that met in New York. Out of this group, seven to eight countries became actively enagaged in GEF affairs. When written positions were developed, the common procedure was that one or two countries developed a draft that was then used as a basis for discussions in the larger group.

UN model of governance, i.e., one country, one vote. They were correspondingly averse to proposals that resembled the Bretton Woods system, in which donor countries dominate.

The OECD countries did not yet speak with one voice, but they shared a number of common interests. One important objective was to avoid what was called a "politically" determined allocation process. They countered the G-77 proposals, not by rejecting the principles on which they were based, but by promoting "neutral" concepts such as efficiency, cost-effectiveness, and various technical criteria. The fulfillment of these standards, OECD countries argued, was important to convince their governments that contributing to the GEF was a good investment. Most OECD countries tended to associate the World Bank with efficiency-oriented criteria, and they frequently regarded UN-style decision making as overly politicized and inefficient. As with the G-77, the OECD countries' preferences were easily related to power in decision making: as contributors, they felt that they should not be outvoted on how the funds should be used.

In principle, this matter was settled at the April meeting prior to Rio. It was agreed that the decision-making system should "guarantee a balanced and equitable representation of the interests of developing countries, as well as give due weight to the funding efforts of donor countries. Neither a 'one-country, one-vote' system, nor a purely 'contribution-weighted' system would adequately address these concerns."[88] This formulation made it evident from the outset that some mixed system would have to be established. In working out the system, the South and the North focused predictably on different parts of this formulation: the G-77 stressed the word "equitable" while OECD countries emphasized "balance" and "due weight to funding efforts." There was, however, considerable variation among OECD countries regarding what an appropriate balance was. The United States, which felt less bound by Rio, and Japan were at one end of the spectrum; they wanted to keep the World Bank at the helm of the GEF. In contrast, countries with strong, longstanding ties to the UN system, e.g., the Dutch and to some extent the Nordics and the Swiss, found themselves closer to the G-77 positions on occasion.

At the Rome meeting, thorny questions emerged when the discussion turned to a possible voting system.[89] It was understood that a Participants Assembly would be created. In Abidjan, most countries agreed that, to prevent the Participants Assembly from becoming unwieldy, it would consist of 30 constituencies: 15 for the South and 15 for the North. Decisions would normally be made on a consensus basis, but a voting system was needed for those instances when consensus could not be reached. Now, the issue on the table was how the votes should be distributed.

The Rome paper presented three options and a number of simulations of the consequences of adopting one system or the other.[90] The OECD countries preferred a system whereby each country's total voting share would be calculated by adding a basic share—the same for all countries—to a contribution-weighted share.[91] The G-77, on the other hand, did not accept the argument that voting should be weighted according to contribution. Instead, they preferred a system based on a simple or qualified majority. However, some differences were visible among the G-77; some countries felt, for example, that none of the options assured "a balanced and equitable representation of the interests of larger and more economically and environmentally significant countries."[92] No agree-

88 See "The Pilot Phase and Beyond."

89 The discussion in Rome was based on a discussion paper called "Decision-Making in the Participants Assembly: Illustrations/ Simulations," The Global Environment Facility, February 5, 1993. Comments from Participants were invited by February 19, after which simulations of further options were sent out on February 24, 1993.

90 See "Decision-Making in the Participants Assembly."

91 Several OECD countries felt it was appropriate if the total share as constituted by equal proportions of basic and contribution-weighted shares. Some countries, however, felt that contributions should weigh more heavily when the total voting power was calculated.

92 Quoted in a letter to the Participants from Ian Johnson, February 24, 1993.

ment was in sight, and the restructuring discussion in Rome ended in a stalemate.[93]

It became apparent in Rome how wide the divergence of perceptions was about how the GEF should be constituted. Prior to this meeting, the ambition had been to avoid a polarization between the North and the South.[94] After Rome, most of those involved in the meetings realized that the trend toward bifurcation was inevitable, making the restructuring an affair between two blocs. The GEF Chairman concluded after this meeting that he had to find new approaches to "get the ball rolling again."[95]

Beijing in May 1993

Following Rome, the GEF Chairman and staff attempted to find common ground to bridge the divisions in time for May's meeting in Beijing. It was evident that issues of governance and the size of the replenishment were linked in the minds of the Participants, albeit the two blocs saw the connection differently. The various components would have to be combined into a "package" that could provide the basis for an agreement, with details to be negotiated later. Bilateral consultations were undertaken, and the Chairman travelled to other international meetings to exchange views and information. The implementing agencies were closely involved in the process and provided extensive comments on successive draft papers. Other groups also did their homework; the G-77 convened a meeting at the South Center in Geneva to consolidate their approach and prepare a note outlining their position. But while the G-77 stance had dominated the Rome meeting, the center stage in Beijing would belong to someone else.

The sensation at the Beijing meeting was provided by the new U.S. delegation. The United States had kept a low profile since the Clinton Administration came to power. Now, a new team swept in, bright and inexperienced, with a demarche containing a set of novel ideas. The new U.S. position was not universally welcomed. It upset the approach the OECD delegations had worked out, and the U.S. representative soon found herself besieged with questions and complaints. The OECD countries pointed out that it was too late in the process to propose radical new notions if the deadlines were to be met and that the U.S. position was "impractical." The greatest stumbling block was that the U.S. position implied support for an independent institution, which was unacceptable to most other OECD countries. They felt it would not only be large and costly, but would undermine the GEF model of joint work by the implementing agencies. Another concern was the United States' preference for project approval by the Participants Assembly. This was a drastic change from its earlier position when it had

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93 The Rome meeting also considered the terms of reference for the evaluation. In the tense atmosphere that characterized the meeting, it was obvious to everyone involved that the "appearance and reality of independence and objectivity" was of paramount importance. (See "Chairman's Summary of the Participants' Discussion of the Draft Terms of Reference for the Evaluation of the GEF Pilot Phase," Rome, March 3, 1993.) The NGO community had been pushing for an evaluation for a long time and was watching the evaluation process carefully. An open letter to the Participants in Rome listed a number of issues the NGOs felt should be included and made it clear that a desk study would be unacceptable. (See, for example, "Open Letter to the GEF Participants Meeting on Governance and Replenishment," Rome, March 4-5, 1993.)

The original idea was that three teams would conduct the evaluation, one from each of the agencies. This triad would be topped off by an independent coordinator. Again, the dual roles of the World Bank became problematic. In the role of an implementing agency, the World Bank would supply one of the three teams of evaluators, but in the role of administrator, the Bank had overall responsibility for the effort, including hiring the coordinator. The Chairman realized the independence of this arrangement could be questioned, and decided to add a steering panel to oversee the process.

The Participants recommended that the steering panel be further strengthened by adding a few more environmental experts and two representatives from the Participants—one each from a developing and a developed country. The new hardline attitude from the G-77 was evident also on this question: despite the fact that the candidates had been suggested to the meeting, and that four out of the seven members were from developing countries, the Chairman of G-77, Ambassador Jaramillo of Colombia, argued that selecting the Southern representative without going via the G-77 was against the spirit of partnership developed arduously in the UNCED process.

94 One example of the efforts to avoid polarization was the discussion around this time of so-called "mixed constituencies." The idea was to put together constituencies in the Participants Assembly so that some would contain both developing and developed countries.

95 Personal conversation with Mr. El-Ashry.

consistently argued in favor of a governance system that left the World Bank Board with a significant say in GEF affairs. To most OECD countries, the new U.S. position translated into micromanagement and political interference by Participants—an outcome they were trying hard to avoid. They worried the United States would play into the hands of the G-77.

The U.S. delegate, Ms. Susan Levine, quickly realized that the U.S. position had upset a delicate dynamic. The position would have to be finessed, or the United States would find itself without the necessary allies. In Beijing, she quickly organized some twenty bilateral consultations to explain the U.S. position and assess the potential for support from other countries. She worked out some talking points and wrote an explanatory paper, stating that, while the new position was not being abandoned, it had been a mistake not to consult other countries ahead of time. In the meeting, she salvaged the situation by spelling out the principles behind the position and avoiding specific controversial points.

Determined not to repeat the mistake of insufficient consultations, the United States initiated informal gatherings before the next meeting. This became a standard practice, and all subsequent negotiations were preceded by informal meetings by various group constellations.

Replenishment

The first formal replenishment meeting was held in Beijing on May 25. A paper had been prepared that dealt with financing needs.[96] While Participants were largely supportive of the proposal, the discussion on needs became overshadowed by a debate on possible supply.

Based on an assessment of the need for funds, the paper proposed that the countries consider "a range of SDR 2–3 billion, equivalent to USD 2.8–4.2 billion" over "three to five years, depending on whether the replenishment is closer to SDR 2 or 3 billion."[97] This estimate was in line with the statements made at Rio the previous year, where a number of OECD countries had declared that they would seek to double or triple the funding level of the pilot phase. Given the disappointing IDA-10 replenishment, there was considerable worry that this target was too optimistic, and the paper noted that the "full extent of donor willingness to replenish the Facility still needs to be established."[98] The developing countries again emphasized that they considered funding an indicator of the OECD countries' commitment to the post-Rio process. It was therefore a great relief when a number of countries voiced their support for the range envisaged in the proposal.

Differences between the major contributors were clearly visible, however. The Netherlands, Switzerland, and the Nordic countries were inclined to support the high end of the envisioned range; other European countries were slightly less optimistic. The sticking point, as in the pilot phase, was the United States. The European countries had not forgotten their frustrations with the U.S when the pilot facility was created. France—shadowed by Germany—had offered the money that initiated the GEF, and several other European countries followed suit with generous contributions. They then watched a recalcitrant United States push forth changes, vacillate on whether or not to contribute, and finally, at the last meeting, announce that it would not contribute to the pilot's core fund.[99] Now, the European countries wanted assurances from the United States that history would not repeat itself.

Ms. Levine confirmed the U.S. intention to be a major contributor in an appropriately restructured GEF, but stated that the discussion of funding levels was premature. This prompted the Europeans to stress the importance of a fair burden-sharing arrangement. Germany and France warned that their contributions were contingent on the U.S. share, and France stated that an appropriate level for its own contribution would be

96 The paper (and all subsequent replenishment papers) was prepared by the Resource Mobilization Department of the World Bank in cooperation with the Administrator's Office. The paper for the Beijing meeting was entitled "GEF Replenishment Paper: Financing Needs for GEF II," GEF/RE.93/1, May 1993.

97 Ibid. The paper recommended that the operations of the second phase—to begin in July 1994—be divided into two stages: one before the new conventions entered into force and one after.

98 Ibid.

99 The U.S. limited itself to parallel funding via USAID.

one-third of the U.S. share. Given the developing countries' position linking the restructuring to the size of the replenishment, there was the risk of a domino effect if conflicts among developed countries led to a low level of replenishment. For the time being, however, indications were sufficiently promising to give the restructuring discussion a positive push forward.

Restructuring

The next day, on May 26, the meeting moved on to restructuring. Progress was made on the voting system in large part because the developing countries had changed their preferences. While promoting a sizeable replenishment, they realized that a system of weighted votes had provided an incentive to contribute. Therefore, if the weighted votes were not too dominant, such a system's positive effect on total funding could supersede its disadvantages. The interest of the developing countries hence shifted to a new option: a double majority system. While the European countries maintained their preference for a single-count vote combining basic and weighted shares, the scope for an agreement on voting widened considerably. As it would take some time to develop new compromise options, the meeting ended one day early. Most delegates left China feeling that the "spirit of Beijing" was a radical improvement compared to Rome. They felt optimistic that further progress would be made at their next meeting in September.

The Interagency Conflict on Legal Status—Summer of 1993

At the Beijing meeting, the Administrator's Office had been asked to draft the legal documentation necessary to establish the GEF. The document, known as the Elements Paper, was intended to form the basis for discussion at the Participants Meeting in September. All three agencies were to collaborate in the drafting process. Anyone who was involved with developing the papers for the Beijing meeting could have predicted that the agencies' different preferences would create significant difficulties. To improve the interaction between the agencies, an Interagency Task Force was established to draft the Elements Paper. Intended as a forum for cooperation, the task force instead became the setting for a major interagency disagreement over the legal identity of the permanent GEF.

In essence, this was a political struggle being played out over legal form. Underneath the legal discussion lurked the persistent issue of where the locus of governance should be, and by extension, who should be making decisions on funding. While it is easy to interpret the interagency conflict in terms of political influence, the people involved did not see themselves as concerned primarily with power. The fervor with which some of them argued their cases revealed a passionate conviction of the rightness of their cause. Nevertheless, a draft options paper boldly pointed to what was at stake:

> Legal establishment is a purely political issue because the question of who has legal control and authority over the GEF goes to the heart of what the vision, mandate and purpose of the Facility is. Governments must therefore achieve consensus on which actors they want to grant primary authority to in the GEF, so the corresponding legal form can be established.[100]

The issue of legal form was debated by the agencies throughout the summer of 1993. When the governments later were to consider the issue, their views were broadly divided along the same lines as the agencies. This issue can therefore be viewed in terms of two "schools of thought."

Generally speaking, one constellation consisted of those who saw themselves as defenders of pragmatism, simplicity, and flexibility. This included most OECD countries, the World Bank, and, at the ministerial level, those concerned with the financial side of development cooperation. This group stressed that the Participants had repeatedly affirmed that the GEF "would build on proven institutional structures, thus avoiding the creation of new institutions."[101] Once the Participants had reached agreement on the Elements Paper, a World Bank resolution was seen as a speedy and practical way of legally establishing the GEF. The endorsement of the UN agencies would be needed, but it would not change the legal personality of the facility. From this viewpoint, the intended governance structure with a Participants Assembly would allow the GEF members sufficient power over the decision

100 Draft of "Options Paper on GEF Governance and Establishment Issues," prepared by UNDP, September 1993.

101 See "The Pilot Phase and Beyond."

making in practice. The alternative, as they saw it, would be a long, drawn-out political process that was likely to result in a new institution, which the Participants had already decided against.

On the opposing side was a group of actors who wanted to move the GEF away from the legal fold of the World Bank. This ambition was shared for a time by the UN agencies, NGOs, the G-77, and a few OECD countries with strong ties to the UN system. In contrast to the language of pragmatism used by those who favored a World Bank resolution, this group argued their case in the name of principles such as democracy, accountability, and universality. They argued that establishing the GEF within the World Bank would reinforce this agency's dominance and run counter to the spirit of UNCED. Instead, the GEF needed a legal identity that would allow the governing body of the GEF—and not the World Bank—to enter into formal agreements with the conventions. This group was therefore searching high and low to find a way to establish the GEF independently of the Bank while avoiding the creation of a full-blown institution.

When the agencies sat down to discuss the legal issue at the first Interagency Task Force meeting, the GEF Administrator's Office argued that this matter had already been settled.[102] The Administrator pointed to an agreement by the heads of agencies at a meeting in October of 1992 and to the December 1992 meeting in Abidjan. These meetings, he stated, confirmed that the restructured GEF should be established by way of a resolution. Once the resolution was approved by the Participants, it would be legally adopted by the World Bank Board and endorsed by the governing bodies of UNDP and UNEP.

But UNDP and UNEP were not content with a legal status quo for the restructured facility. Armed with legal advisors and the Rio principles, they set out to find an alternative. UNEP had reversed its earlier position and claimed not to have endorsed the legal framework as presented in Abidjan. Instead it now favored an "independent legal entity."[103] UNEP and UNDP shared the opinion that such an entity need not be a new international institution. In UNEP's view, the resolution establishing the GEF's legal form should be adopted by the Participants, possibly in several steps, and possibly as part of a diplomatic conference at the December meeting. To the GEF Administrator's Office, such a process resembled the "treaty approach," which was not only time-consuming, but a threat to the replenishment process as it was not in accordance with the Participants' directives.

The relations between the agencies did not improve at the second task force meeting in late July.[104] UNDP advocated an interagency agreement to be signed by the heads of the agencies, and thereafter authorized and endorsed by the respective governing bodies. Its legal force would derive from all three agencies, not just the World Bank. It was unclear, however, if UNEP and UNDP had the legal authority to establish the kind of subsidiary body this might entail. Neither UNDP nor UNEP were on the list of United Nations General Assembly organs that were granted such authority.[105] Legal opinions sought by UNDP indicated that the only way for UNDP and UNEP to grant legality to the GEF was if the General Assembly became involved. The issue was far from straightforward, however, as international lawyers disagreed on how to interpret the legality of the the current and future GEF.[106] Because their training is commonly

102 The first Interagency Task Force meeting took place on June 29, 1993.

103 "Establishment of the Legal Framework for GEFII: A Note by UNEP," June 24, 1993.

104 The second Interagency Task Force meeting took place on July 27, 1993.

105 "The UNGA had adopted a resolution stating that 'subsidiary organs of the Assembly shall not under ordinary circumstances create new standing bodies or *ad hoc* sessional or intersessional bodies which require additional resources without the approval of the Assembly.' (GE Res. 3351 (XXIX) of 18 December 1974). This resolution is still in effect." Quoted in "Strategic Options Regarding the Legal Capacity of UNDP to Jointly Establish the GEF," UNDP, October 21, 1993.

106 When discussing the legality of the pilot phase, some people make a legal separation between the GEF itself, and the GET, i.e., the trust fund and associated arrangments. They hold that while the GET was established via World Bank resolution 91–5 in March 1991, the GEF did not come into being until the interagency agreement was signed in October 1991. This is the view implied in the Independent Evaluation, for example. The most common interpretation, however, is that the World Bank resolution constituted the legal foundation of the GEF. In this view, there is no source of legal power beyond the World Bank. This is the view taken by most observers, including the the UN Legal Office, the World Bank legal staff, and numerous written NGO opinions.

focused on formal legal agreements, many were unfamiliar with the legal intricacies of trust fund arrangements.[107]

During the second task force meeting, interagency relations broke down. First, the agency representatives disagreed about the substantive issues. Afterwards, they disagreed about what had transpired during the meeting. The minutes of the meeting were bounced back and forth accompanied by increasing tension. The GEF Chairman realized that this issue would have to be handled at a higher level. The next day, Mr. El-Ashry contacted UNEP's Executive Director, Ms. Elizabeth Dowdeswell, and the Administrator of UNDP, Mr. Gus Speth.[108] He explained the situation and suggested that the heads of the agencies try to resolve the issue at their upcoming meeting. A decision was eventually made to try to restart the process in two steps. For the next meeting, staff was to focus on the main body of "Elements for Establishing the Restructured GEF," and leave the tricky questions until after the Participants Meeting in September.

Washington, D.C., in September 1993

Replenishment

The Washington meeting began with a replenishment discussion on September 22, 1993. This time, the Participants discussed a paper on funding modalities that dealt mostly with technical issues.[109] An initial discussion of the burden-sharing system also took place.[110] The pilot facility had been based on voluntary contributions, but the permanent facility required a more formal system. The meeting pointed in the direction of a burden-sharing system similar to that used in IDA-10. But because there were fewer contributors to the GEF than to IDA, the relative shares of the contributing countries would have to be adjusted accordingly. While the meeting did not conclude the discussion on the burden-sharing system, the notion of an "adjusted IDA" system gained ground.[111]

The political situation underlying these discussions was primarily a matter between the European countries and the United States. The European countries felt they had contributed a disproportionate share to the pilot phase, and they were determined not to make this imbalance permanent. With clear reference to the United States' bilateral co-financing arrangement in the pilot phase, they pointed out that contributions to the core fund were essential to ensure the multilateral character of the facility. To this effect, they put pressure on the United States with regard to both burden-sharing and funding levels.

The Finance and Resource Mobilization Department (FRM) of the World Bank played a lead role in the replenishment process, and the replenishment meetings were co-chaired by FRM's Vice President and GEF's Chairman.[112] Department staff carefully assessed the specific situation of each potential contributor. Their assessment, after talking to delegates at the Washington meeting, was that expectations for funding clearly exceeded the likely outcome. They were concerned about the potential consequences of a gap between anticipated and actual levels of replenishment and began the delicate task of bringing the two closer together.

Restructuring and Governance System

The meeting on restructuring took place from September 23–24. At this time, a new decision-making system consisting of two tiers was proposed. Up until this meeting, it was anticipated that all decision making would take place in a constituency-based Participants Assembly. But in response to demands by the G-77 for a "universal" Assembly[113], a system of two deci-

107 I am indebted to Mr. Peter Sand for pointing this out.

108 Since 1992, there had been a change at the top of both UN agencies. Mr. James Gustav Speth had replaced William Draper as the Administrator of UNDP, and Ms. Elizabeth Dowdeswell had succeeded Mr. Mostafa Tolba as Executive Director of UNEP in the beginning of 1993.

109 Discussions were based on a paper entitled "Funding Modalities for the GEF Replenishment," GEF/RE.93/2, September 1993.

110 See "GEF Replenishment Meeting, September 22, 1993: Chairman's Summary."

111 A number of different burden-sharing systems were discussed, including the GEF pilot phase shares, adjusted GNP shares, UN scale of assessments, and IDA shares.

112 The fact that the World Bank was leading the replenishment process was not a matter of controversy as no other agency had comparable capabilities in this area.

113 For the G–77 position, see "Group of 77 and China Position on GEF/PA.93.2," G-77/93/1, September 23, 1993.

sion-making bodies was introduced.[114] The proposal envisaged a Participants Assembly in which all member states were represented and a governing Council in which representation would be based on constituencies.

The OECD countries grudgingly considered the two-tier system. A number of them thought a universal Participants Assembly was an ineffective, unnecessary, and costly addition. Despite these reservations, the OECD countries stated they could accept the two-layer system on the condition that the main decision making would not-as the G-77 wanted-take place in the Participants Assembly, but in a smaller governing Council. The focus of the discussion then shifted to how such a Council would function. For voting, the double majority system gained ground. In such a system, voting would be based on one basic count of all Participants and one count that reflected financial contributions.[115] It was not resolved whether a simple majority would be sufficient, as the G-77 wanted, or whether a qualified majority would rule.

It was increasingly clear that a functionally independent Secretariat would be created as part of the permanent facility. A longstanding demand of the NGOs, this view was supported by the G-77 and by the United States. Over time, an increasing number of other OECD Participants saw the merit in a Secretariat with terms of reference separate from that of the World Bank. When the interim report of the evaluation team joined the chorus, the remaining resistance died down.[116] The original case against an independent Secretariat was that it contravened management by the implementing agencies and seemed to imply a new institution. The term "functionally independent" provided a way out. It meant the Secretariat could continue to be physically located in and administratively supported by the World Bank. The Secretariat would not, however, be supervised by the Bank; instead it would be accountable only to the Council and the Assembly.[117]

Legal Status

The time had come for the Participants to try to tackle the legal issue. Japan's position was at one end of the spectrum of options. Throughout the negotiations, Japan had consistently emphasized a single, strong condition for its participation: establishment of the GEF via a resolution approved by the World Bank Board. At the Beijing meeting, Japan declared that if the GEF became an independent international institution outside the revenue system, it would be legally impossible for Japan to make regular contributions. It considered a trust fund with clear links to the World Bank acceptable, but was uncomfortable with any notions of independence from the Bank. Previously, Japan's insistence on a strong Bank role had been shared by the United States, but changes in the U.S. position left Japan increasingly isolated.

At the other end of the spectrum was a proposal tabled by the G-77, which also received support from UNDP.[118] Setting aside the earlier consensus on "no new institutions," this proposal suggested that the restructured GEF should be constituted as an intergovernmental entity established via resolution by governments. This option implied a new international institution and a time-consuming treaty approach, both of which were undesirable to other countries. The considerable gap between the two extreme positions made many countries realize that flexibility was essential to avoid a deadlock. The Dutch delegate suggested a compromise solution in the form of a "parallel resolution" by all three agencies.[119] This idea gained ground although the legal ramifications were unclear. At the end of the meeting, it was obvious that consensus could not be reached. In order to make some progress possible in time for the next meeting, the Chairman invited the Participants to submit written comments to the Office of the Administrator, a suggestion many countries would heed.

114 "Elements for Establishing the Restructured Global Environment Facility," GEF/PA.93/2, September 1993.

115 See Technical Note on "Voting Mechanism," GEF/PA.93/3, September 1993.

116 The "Interim Report of the Independent Evaluation of the GEF Pilot Phase" of September 10, 1993, was distributed to Participants as part of the background information documents for the Washington meeting.

117 A few OECD countries wanted the Secretariat to be accountable to both the Council and the World Bank, acting as Trustee. It was not, however, the majority position. The U.S., the G–77, and most OECD countries preferred the Trustee to have only fiduciary and administrative responsibilities.

118 Ibid.

119 See "Chairman's Summary: GEF Special Participants Meeting," Washington, D.C., September 21–24, 1993.

Following the Washington meeting, the heads of agencies met on September 30, 1993.[120] There, it was "reaffirmed by the Heads that the 'new' GEF will be established by resolution of the three agencies."[121] This was a compromise all parties could accept, but again, the legal standing remained somewhat obscure. A number of related issues also awaited clarification. Among them were the role of the Trustee, the Interagency Agreement, and the relations to the conventions.

Paris in November, 1993

Replenishment

The GEF delegates from the G-7 countries met informally before the Participants Meeting in Paris. At this gathering, the Resource Mobilization Department's somber predictions were confirmed: the target for the replenishment of SDR 2–3 billion could not be reached. The commitment that OECD leaders had eloquently voiced in Rio had eroded considerably in the year and a half following UNCED. The G-7 delegates knew that the replenishment target was critical to the success of the restructuring, but despite their efforts to persuade domestic authorities, they were now faced with an embarrassing reality. As one of them put it: "UNCED was cleared by 120 world leaders. Now seven subordinates were sitting in one room trying to rescue some financial resources."[122] At the end of the G-7 deliberations, the negotiations confronted a potentially dangerous stumbling block, making it likely that the subsequent meeting in Paris would be focused on damage control.

The limiting factor was—again—the U.S. contribution. Everyone recognized the U.S. delegation's intensive efforts to wrestle money from a reluctant domestic system, but the limits to what could be accomplished were now apparent. The U.S. delegate was aware of the damage that could result from the United States' failure to produce a sufficient contribution. In an address to the International Development Subcommittee of the U.S. Congress in August, she argued: "The Administration's request for GEF in FY 1994 is absolutely critical to our credibility and effective voice in this important environmental endeavor. We cannot continue to negotiate successfully if we remain the only major donor that has not contributed to the GEF Core Fund. We must contribute our fair share to be taken seriously."[123] She added that our "attempt to steer the policy debate without commensurate contribution is increasingly resented by donors and recipients alike."

Her challenge was aggravated by the U.S.-based NGOs, which remained critical of the GEF, particularly its connection to the World Bank. But after Rio, two different viewpoints could be detected in the U.S. NGO community. One group continued their definitive rejection of the GEF because they were convinced it was the wrong model for environmental improvement. They viewed it as "extremely doubtful that the GEF could be reformed in a meaningful way, without reforming the World Bank as a whole...."[124] This group effectively lobbied some parts of the U.S. government, engendering questions about why the United States should contribute to a "green fund" that environmentalists did not support.[125]

Other NGOs accepted the notion of a restructured and permanent GEF. To them, the task at hand was to influence the restructuring in the right direction. They wrote to the United States President and urged that he "include a level of funding in the international affairs budget that is sufficient to assert U.S. leadership in

120 In addition to the GEF Chairman, Mr. El-Ashry, the meeting was attended by Mr. James Gustav Speth, Administrator of UNDP, Ms. Elizabeth Dowdeswell, Executive Director of UNEP, and Mr. Sven Sandström, Managing Director of the World Bank (on behalf of the President).

121 "Minutes of Heads of Agencies Meeting on GEF Restructuring," Washington, D.C., September 30, 1993."

122 Personal communication with German delegate Mr. Hans-Peter Schipulle.

123 Statement by Susan Levine, Deputy Assistant Secretary for International Development, Debt, and Environmental Policy, Treasury Department, before the International Development Subcommittee of the House Committee on Banking and Urban Affairs, August 3, 1993.

124 See, for example, "Statement of Craig G. Macfarland, Consultant in Tropical Natural Resource Management" before the Subcommittee on International Development, Finance, Trade and Monetary Policy, U.S. House of Representatives, August 3, 1993.

125 Personal communication with Ms. Susan Levine, Deputy Assistant Secretary, International Development, Debt, and Environment Policy, Treasury Department.

meeting global environmental and development challenges. Specifically, funding must be adequate to fulfill U.S. obligations under international treaties through the Global Environment Facility."[126] The GEF also had an ally in the Vice President, Mr. Al Gore, who had made the GEF one of his two international environmental priorities, and who took an interest in ensuring the process would not be derailed.

This support notwithstanding, it was evident that the U.S. contribution would not come close to its share of the SDR 2–3 billion level discussed in Beijing. After several hard rounds of negotiations within the system, Ms. Levine managed to mobilize what amounted to USD 100 million per year. Extended over three years, this would fall terribly short of the envisaged levels. To improve the situation somewhat, a technical arrangement was worked out that made it possible to contribute to the three-year program over four years. Combined with an earlier U.S. commitment of USD 30 million, this would place the U.S. share somewhere between IDA and an adjusted IDA share if—and this was the main problem—the total fund was not SDR 2 billion, but USD 2 billion.

It should be recalled that a total amount of USD 2 billion was more than twice the size of the core fund in the pilot phase. Nonetheless, it was considerably lower than the SDR 2–3 billion that had seemed feasible before the size of the U.S. contribution became known. (At the time, SDR 2–3 billion corresponded to USD 2.8–4.2 billion.)[127] Given the way both North and South perceived the link between replenishment and the restructuring, there was a considerable risk that the lower amount could jeopardize the restructuring process. One problem was the number of OECD countries that had linked their contributions to the U.S. share. They found it difficult to justify to their authorities why they should contribute a proportionally greater share than bigger countries. Indications are that some contributors may have been willing to work out an arrangement to compensate for the U.S. contribution. But this idea was ruled out almost immediately as France and Germany reaffirmed that their contributions were contingent on the U.S. share. Japan also was hesitant to exceed the U.S. share. As a result—and despite the fact that a number of countries had prepared for a larger replenishment—it appeared that USD 2 billion was the maximum amount that could be raised.

The replenishment meeting opened to an apprehensive mood as the disappointing news was conveyed to the G-77. Since the developing countries linked cooperation on restructuring to a satisfactory replenishment, the room was nervously awaiting their reaction to the lower figures. But despite the obvious dash to their hopes, the developing countries showed a certain understanding for the limitations imposed by the domestic political processes of some contributors. They realized that the new figure was a *fait accompli*: they could either walk away from the process or accept the new target. They chose the latter but strongly emphasized that this, literally, was where the buck stopped. Any reduction below the new target of USD 2 billion would seriously jeopardize a final agreement.

With the issue of total levels of funding out of the way, the meeting accepted a basic burden-sharing framework consisting of adjusted IDA-10 shares, with the option of voluntary contributions over and above the assessed amount. This system, a number of delegates pointed out, should be seen as "transitional," and would not necessarily be used for the next replenishment.

Restructuring

Representatives of 55 countries participated in the subsequent restructuring meeting, from November 4–6, 1993. As only the December meeting was scheduled to follow, the delegations knew they had to make some progress. In light of the disappointing news the developing countries had received at the replenishment meeting, the Chairman pleaded with the OECD countries to be constructive. The Administrator's Office presented a revised draft of the Elements Paper that summarized agreed modifications but bracketed unresolved issues.

Governance System

There was, by now, broad but not unanimous agreement on a two-tier governance system consisting of

126 Letter to the The Honorable William J. Clinton, President of the United States, signed by Kathryn S. Fuller, President, World Wildlife Fund, on behalf of the heads of The Nature Conservancy, Conservation International, and Natural Resources Defense Council.

127 The alternatives discussed are outlined in "Options for Burden Sharing: GEF Replenishment Paper," GEF/RE.93/3, November 3, 1993.

both a universal Participants Assembly (PA) and a Council of 30 constituencies. However, the relative power of the two tiers was unresolved, and it was not clear how often the PA would meet. Moreover, while it seemed likely that voting in the Council would be based on a double majority system, it remained to be decided how large a qualified majority would be required for approval.

The countries discussed the issue of project approval by the Council, which concerned whether or not the Council should have the power to approve, not only the work program, but specific projects. If the Council were to approve every project individually, the Secretariat would have to become much larger than contributors were comfortable with. It also implied micromanagement by the Participants, which most OECD countries considered detrimental to an effective process. At the same time, the United States pointed out that when the work program is approved, individual projects are at a developmental stage, and may undergo significant changes in later stages of the project cycle. The United States therefore felt strongly that the Participants should have an opportunity to prevent a particular project from being implemented even after the work program had been approved. It argued that, for the Council to be accountable to the Conventions, some minimal procedures for later intervention by the Participants were needed. A number of compromise proposals were aired, but no agreement was reached.

The meeting's most controversial issue was the Chairperson of the future Council. Everyone was aware that the Chairperson would have considerable influence in setting the agenda and conducting the Council meetings. The OECD countries wanted the Chief Executive Officer (CEO) of the Secretariat appointed as Chairperson. They felt a professional would assure that the meetings were conducted in a business-like fashion. The G-77, on the other hand, wanted the Chairperson to be a participant elected by the Council.[128] Their main concern was with accountability: because the CEO of the Secretariat was accountable to the Council, they thought it inappropriate that the same person should chair the Council meetings.[129] The OECD countries, by contrast, thought that a Chairperson elected among government representatives would find it difficult to assess the consensus of the meeting in an impartial manner. Such an arrangement signalled just the kind of politicized body that they had resisted throughout the negotiations and suspected would reduce the efficiency of the facility. Agreement on this issue was nowhere in sight.

Legal Status

The legal issue, however, seemed to be moving towards a conclusion. The Elements Paper presented in Paris suggested that the GEF should be "given effect by resolutions of the Implementing Agencies in accordance with their respective rules and procedural arrangements."[130] This formulation did not generate serious controversy although the legal ramifications were uncertain. The discussion therefore moved on to the related concern of how the GEF should establish relations with the Conventions. What legal force did such an agreement derive from the resolutions by UNDP and UNEP? And if the World Bank was the only legal "parent," how would the relations with the Conventions be structured? The G-77 favored the idea that the Council should be able to enter into agreements with other international bodies directly, but support for this position was eroding even within that group.

The UN/G-77 camp had suffered a setback when the UN Office of Legal Affairs (UNOLA) responded to a request from the INC for the Climate Change Convention. The INC asked for a legal opinion on the appropriate arrangements between the GEF and the Conference of the Parties (COP) of the Convention. UNOLA replied that, as these bodies were currently structured, the most convenient method would be for the World Bank as trustee to enter into such agreements on behalf of the GEF Council. Furthermore, depending on the language of the document establishing the GEF, there may "be no need to conclude an

128 See, for example, "Group of 77 and China Position on GEF," September 23, 1993.

129 This position was supported by the NGOs. See "NGO Message to the GEF Special Participants Meeting," Paris, November 3–6, 1993."

130 Elements Paper as revised for the Participants Meeting in Paris.

agreement between the COP and the GEF covering all aspects of their relationship."[131] This significantly weakened the argument that the GEF required a separate legal identity in order to serve the Conventions.

Interagency Agreement

The delayed text on interagency relations also was presented to the Paris meeting. After the July meeting's failure to reach agreement, a new Interagency Task Force was created to draft an annex that specified the relations between the agencies. As in other cases when the agencies were left towork out their internal relations, the process proved difficult. Ambitions were progressively scaled down, and the resulting document, entitled "Principles of Cooperation Among the Implementing Agencies" was agreed by way of a general text that avoided contentious issues.[132] The final product was approved by the Heads of Agencies in October 1993. But because the most difficult aspects of agency relations were left out, the annex did not receive much attention except from the Participants at the Paris meeting.

Cartagena in December 1993

At Colombia's invitation, the venue for the December meeting had been changed from Geneva to Cartagena. Colombia held the chair of the G-77 in 1993, and hosting the final negotiating session on the GEF was seen as an appropriate way to end this term. Seventy-seven delegations gathered for the meeting that took place from December 6–10, 1993.

Evaluation

The meeting in Cartagena opened with a presentation of the independent evaluation. A year had passed since the Participants had requested an evaluation of the pilot phase. In this time, three agency teams, a coordinator, and an independent panel of experts had struggled to get the evaluation ready. The timing of the presentation on the eve of the final meeting was less than ideal, but an interim report containing the gist of the findings had been released earlier in the fall.[133] The conclusions therefore did not come as a complete surprise.

The evaluation was a difficult undertaking for a number of reasons. The time pressure and elaborate structure of the evaluation did not facilitate the process, but there were additional complications. One substantive problem was the number of changes the GEF had undergone since its inception. The terms of reference stated that the evaluation would "be based on the objectives and criteria originally agreed for the pilot phase."[134] At the same time, it was hoped that the evaluation would support the current task of establishing a permanent facility, and everyone knew the days of the exploratory mandate were over. It was therefore more valuable—and perhaps unavoidable—to assess the GEF's performance not only against the original mandate, but based on the values and understandings that had evolved during the passing three years. In this sense, the evaluators realized they were assesing "a moving target."[135]

A further complication was that the evaluation would gauge the preliminary results of a mandate explicitly designed to be exploratory. Few GEF projects had reached a stage where an evaluation of results was possible. In addition, the preponderance of projects came from the first two tranches, which were developed before STAP guidelines were in place and before the Participants established indicative guidelines for the relative proportions of investment and technical assistance projects. While the evaluators visited 31 projects, they were generally forced to work with preparatory documents that were still undergoing modifications. So, while many considered the evaluation overdue from an institutional standpoint, results on the ground were still preliminary.

131 Memorandum from Mr. Carl-August Fleischhauer, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to Mr. Michael Zammit Cutajar, Executive Secretary, INC/FCCC, November 4, 1993. It should be noted that the opinion was written when the future legal capacity of the GEF was not yet certain. The opinion stated that if an agreement was entered into by UNDP, UNEP, and the World Bank, it would in legal terms be a joint subsidiary body of the World Bank and the United Nations. The signatures of UNDP and UNEP would, however, be on behalf of the UN and might require approval by this body in order to have legal force.

132 "Principles of Cooperation Among the Implementing Agencies," October 27, 1993.

133 The Participants had received the interim report for the Washington meeting in September.

134 "Global Environment Facility: Independent Evaluation of the Pilot Phase," December 2, 1993, p.153.

135 "Independent Panel of Experts: Report to the Chairman and Participants of the GEF," published as an annex to the Independent Evaluation, pp. 187–192.

The knowledge that the findings would become part of a highly political process did not make the evaluation easier. The controversies surrounding the GEF, and the initial misgivings regarding the independence of the evaluation process, were part of the political reality the evaluators had to contend with. Somehow, the evaluation would have to respond to the criticism of the GEF by NGOs and developing countries. There was no escape from the fact that a positive report could be viewed as a whitewash by those who did not see merit in the facility. Anyone who may have anticipated such an outcome was reassured when the evaluation found cause to be seriously critical of the pilot phase on a number of different points.

The evaluation found that the basic mission, objectives, and strategies were inadequately developed. In a seeming rebuke to the original Participants, the evaluators did not agree with the fundamental rationale of the pilot phase, i.e., to get a program up and running to test approaches. That pressure to move ahead with projects before strategic frameworks and criteria were developed was the source of many other objections, such as those relating to the quality and relevance of the work program. At the very least, the evaluators argued, the exploratory rationale ought to have been accompanied by a continuous evaluation mechanism so that lessons could have been gleaned along the way. To avoid a repetition of this situation, they recommended that the Participants make sure that "strategies and program guidelines are in place before program initiatives are undertaken with the funds anticipated from the replenishment of GEF II."[136]

The structure of the pilot facility was identified as a significant problem. The lack of a core management capability had constrained the development of coherent policies and programs. The evaluators were not impressed with the cooperation between the three agencies, and found the collaborative arrangements "that were supposed to result in interagency synergy and provide leadership for the GEF *as a whole* have proved to be ineffective."[137] (Emphasis original.) They concluded that the overview and management function ought to be strengthened by developing the Office of the Administrator into a Secretariat "that is organizationally, administratively, and functionally independent from the implementing agencies and organizations."[138] They also recommended that the STAP should be modified into a more independent advisory body, collaboration with NGOs should be increased, and the range of organizations that could implement projects should be expanded beyond the original three agencies.

From a political perspective, the evaluators had struck a perfect balance. In light of the political tensions at this time—and the critical content of the text—the absence of controversy is quite remarkable. Participants and NGOs alike stated that the evaluation was both well executed and useful. The NGOs commented that "the Evaluation has been as thorough as it was possible to be within the [time] constraints....Broadly speaking, NGOs very much agree with the Evaluation."[139]

One reason why the evaluation satisfied so many was that much of the criticism echoed points that NGOs had made earlier, and with which most Participants now agreed. A draft GEF paper in response to the evaluation pointed out that there was "a great deal of convergence between the emergent Participants' view of the GEF beyond its Pilot Phase and what the Evaluation report recommends."[140] The issue of a "functionally independent" Secretariat was one example of recommendations by the evaluation that was already on the restructuring agenda. Moreover, the evaluation did not recommend outright any concrete measures in areas that were matters of dispute between the two main blocs.

The implementing agencies received the evaluation politely despite its critical assessment of their work and the demotion it recommended for them in the future. UNEP stated its "appreciation for the excellent work done by the Evaluation under the extreme time constraints."[141] The World Bank, in a more mixed review, gracefully said the evaluators had "high-

136 Independent Evaluation, p. 13.

137 Ibid., p. 7.

138 Ibid., p. 9.

139 "NGO Statement on the GEF Evaluation to the GEF Participants Assembly, December 6, 1993, Cartagena de Indias, Colombia."

140 "The GEF After the Evaluation: Learning from Experience and Looking Forward," GEF/PA.93/7, December 2, 1993.

141 "Statement by Mr. Nay Htun, Deputy Executive Director, UNEP" at the GEF Participants Meeting, Cartagena, Colombia, December 6–10, 1993.

lighted issues better than we could and with a credibility that we might lack..."[142] Ironically, the evaluation is one issue on which the implementing agencies seemed to be in perfect agreement. In private conversations, their objections were variations on the same theme: the evaluation did not adequately take into account the changes that took place inside and outside the GEF during the pilot phase.[143]

The World Bank and UNDP also felt that, because the evaluators did not like how quickly some projects had been approved, they overlooked that the trial-and-error approach had in fact been the strategy. UNDP stated: "Pilot Phase is being criticized for a lack of strategy. The Pilot Phase was supposed to be a learning by doing exercise. It was not possible and perhaps not even sensible to have an overarching strategy in all four programming areas..."[144] And answering the criticism that the GEF had not sufficiently promoted innovation, the World Bank Coordinator stated: "There are of course different interpretations on innovation. We responded to a definition you accepted in 1991. And by that definition, we see many innovative applications of policy and institutional arrangements, techniques, and technologies in the portfolio."[145]

The key question is what impact the evaluation had on the negotiations. One way to measure its effect is to judge whether the Participants changed their positions based on the recommendations. It is apparent that the evaluation's influence on the outcome in Cartagena was moderated by the fact that a number of the report's key conclusions had already been accepted or were on the restructuring agenda. Therefore, despite the fact that it lent legitimacy to certain positions[146], the evaluation's main impact was not felt in the short run.[147] Its real significance became obvious over time, when its recommendations were used to guide the implementation of the restructuring agreement. For example, it proved valuable when the long-term operational strategy and practices were being prepared.[148]

Restructuring

When the Cartagena meeting turned to governance issues, the broad principles that guided the process had narrowed to a few remaining issues. The progression toward increasingly specific matters had not, however, reduced the political intensity of the negotiations. This was evident by the first introductory statement. Speaking as host country and on behalf of the G-77, Colombia opened the meeting by saying:

> We would like to reaffirm our deep concern over the decline of funds pledged to the replenishment of the GEF in its second phase, for we all know that the targets we are dealing with today are well below the expectations and needs made evident during UNCED. The Group of 77 would regard as irresponsible the constitution of a fund, which not only would underestimate the financial requirements for sustainable development, but also establishes a non-democratic decision-making mechanism, which would distract the world's attention on such a fundamental problem as environmental degradation.[149]

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142 "Statement of the World Bank in its Role as an Implementing Agency: Review of the GEF Evaluation," GEF Participants Meeting, Cartagena, December 6, 1993.

143 This assessment is based on interviews with 22 staff members at all three implementing agencies.

144 "UNDP Comments on Independent Evaluation," November 19, 1993.

145 "Statement of the World Bank in Its Role as an Implementing Agency" (see note 142).

146 The findings of the evaluation was also used in domestic discussions on the GEF. One example is the debate in the U.S. House of Representatives when the Foreign Appropriations Bill—which included the GEF—was passed on May 25, 1994.

147 This conclusion is based on interviews with representatives of 16 countries present at the Cartagena meeting. They were asked if the position of their countries was altered by the findings in the interim or final version of the evaluation.

148 At the first meeting of the Council, on July 12–13, 1994, the Participants discussed how to follow up the recommendations of the Evaluation. At the second meeting, a checklist of the recommendations was prepared. The meeting noted that several of the Evaluation's key recommendations had been implemented. The Secretariat was also requested to report regularly on further progress in this regard. Among the later changes that conform to the recommendations of the Evaluation are the development of an operational strategy, NGO observer status, and a new institutional mechanism for interagency relations, called GEFOP. (See document GEF/C.2/8, Follow-up to Recommendations Set Forth in the Independent Evaluation of the GEF Pilot Phase, reviewed at the Council meeting of November 1-3, 1994.)

149 "Intervention of the Group of 77 for the VI GEF Participants Meeting, Cartagena, Colombia—December, 6–10 December, 1993," Opening Statement by Colombia, delivered December 8, 1993.

The uncompromising statement sent a clear signal to the OECD camp. The expectant mood was gone, and mutual suspicion grew. The situation did not improve when the rumor spread that one OECD country had developed a "price list" outlining how much a loss in the restructuring would cost in the replenishment. Delegates on both sides described each other as "wanting to play hardball" and "they wanted to see how far we could go."[150]

At the request of G-77, the format for the negotiations had been changed: deliberations would now occur within contact groups. The Chairman selected seven OECD countries to constitute one group; the G-77 chose seven countries for the other, with some countries grumbling at the selection.[151] The OECD delegates were not used to contact groups and thought this system further reinforced the polarization of the blocs. Some of them also felt uncomfortably constrained by having to conform to group positions that did not reflect their own. This was especially bothersome for those countries that, on some issues, "felt closer to the other side." The range of views in the G-77 contact group also gave rise to tensions, and those excluded from the group complained about a lack of transparency. Larger G-77 countries felt that their interests were not given sufficient attention, as some of the smaller, ideologically motivated countries prioritized "symbolic issues."[152] Discontent also brewed in some delegations that were represented by individuals from financial branches, whose priorities frequently differed from the political positions embraced by G-77 UN representatives.

These tensions notwithstanding, four issues had emerged as central concerns in the restructuring. At this point in the negotiations, these issues signified not only the actual consequences for the restructured GEF, but a loss or gain for the respective blocs. The Chairman realized that the best prospects for moving ahead were offered by packaging the issues together. Rather than tackling the four issues one by one, they had to be resolved as a package where concessions in one area could be rewarded in another in a way that was perceived by both blocs as a fair give-and-take process.

The first issue concerned how often the Participants Assembly should meet. The G-77 had backed down from its original demand for annual meetings and now agreed that every other year would be appropriate. The OECD thought a meeting every other year would be unnecessary and expensive; they preferred for the Assembly to meet at three-year intervals. Both sides regarded this issue as potentially open to compromise.

Second was the issue of how great a majority would be needed to pass a decision if a vote was called. It was already agreed that decisions would be taken by consensus whenever possible. If a consensus could not be reached, voting would be based on a double majority system, referring to both the votes of each member state, and the votes weighted according to contributions. The G-77 preferred a simple majority to be decisive, while the OECD countries proposed a qualified majority of 60 to 75 percent. Both groups were prepared to make concessions as part of the bargaining on this issue also.

The third issue was the number and distribution of seats, i.e., constituencies, on the Council. Throughout 1993, it was assumed that 30 seats would be established, divided equally between developed and developing countries. This issue was now reopened. The OECD countries thought fewer seats would make for more efficient decision making. At the same time, the smaller donors made it plain that any adjustment in the number of seats could not be at their expense. The G-77 wanted a majority in the Council, and thus preferred more seats. In this camp, too, there were intra-group considerations regarding which countries, or groups of countries, would get a seat. To some key countries in the G-77, this was a priority issue. The

150 The interpretation of the Cartagena meeting entailed in this paper is based on interviews with 20 people present at the Cartagena meeting.

151 The G-77 Contact Group was made up of Ms. Juanita Castanjo of Colombia, Ambassador Razali Ismail of Malaysia, Mr. Ghazi Jomaa of Tunisia, Ambassador James Baba of Uganda, Mr. William Ehlers of Uruguay, Mr. Luiz Lampreia of Brazil, Mr. N.K. Singh of India, and Mr. Shengman Zhang of China. The OECD Contact Group was constituted by Ms. Susan Levine of the United States, Mr. Robert Ainscow of the United Kingdom, Mr. Pierre Moullade of France, Mr. Hans-Peter Schipulle of Germany, Mr. Raymond Clémençon of Switzerland, Mr. Lennart Bage of Sweden, and Mr. Frits Schlingemann of the Netherlands.

152 Personal communication with the author (see note 150).

OECD countries, on the other hand, were open to conceding one or two additional seats as part of a deal.[153]

The fourth and trickiest issue was who should chair the Council meetings. The positions were unchanged: the OECD countries wanted the CEO of the Secretariat in this position while the G-77 maintained their preference for a chairperson elected from the Council delegates. Both sides saw this issue in terms of the larger principles they struggled to protect: OECD felt the efficiency of the facility was at stake, while the G-77 was defending its ideals of participation and accountability. Neither side was inclined to give way.

When the negotiations began, they centered on the last two issues—the number of seats and the chairmanship—with both blocs intending to use the other two issues to tip the balance of a potential agreement. The original OECD "package" consisted of the CEO serving as Chairperson, and the Council containing 30 seats: 14 for developing countries, 14 for developed countries, and 2 for economies in transition, i.e., Eastern European countries. The developing countries declined that package because they would gain neither of their most coveted issues: a majority on the Council and the Chair elected from the Participants.[154] Potential deadlock over the chairmanship loomed on the horizon.

There are many interpretations of what happened next. The most commonly told story is that the OECD presented two options to the developing countries. The first consisted of 32 seats on the Council and the CEO as Chairperson. The second option offered a Council of 31 seats—the extra one for developing countries—and a compromise solution on the chairmanship consisting of both a CEO and an elected co-Chair. The G-77 deliberated, some informal discussions between the groups took place, but no conclusion had been reached as the delegates retired for the evening.

The next morning brought a shock. During the previous day, a number of delegates had negotiated beyond their instructions, and the result was not universally appreciated in the delegates' capitals. In particular, the authorities in Paris felt the concessions had gone too far, and new instructions were conveyed to the French delegate overnight. When the morning came, France could no longer support the compromise proposals. It reverted to the original OECD position, warning that the French contribution would otherwise be reduced. Other delegates shared the French delegate's difficulties in getting contributions authorized from their capitals. The German delegate had problems getting confirmation from his headquarters, and the Italians were worried and skeptical. Indications are that the European capitals were primarily dissatisfied with the burden-sharing system. Matters were only marginally better in the North American delegations. The Canadians were uncertain, and the United States had enlisted the help of friends in various places to get the green light from Treasury; meanwhile, some U.S. NGOs continued lobbying to prevent the United States from pledging.

By this time, all other problems of the negotiations had been rendered moot. Neither France nor Germany were in a position to pledge their intended share. The rumor spread first to the G-7 and then to the larger OECD group. Finally, the G-77 were told that "certain countries were not in a position" to contribute their intended shares.[155] The G-77 were understandably angered and, amidst accusations of blackmail and reneging on Rio, it became evident that the Cartagena meeting had come to an end.

Legal Status

Some claim that if there had been more time, an agreement could have been reached. As it was, many issues were still on the agenda; the annexes, for example, had not yet been looked at. A legal contact group had been established in Cartagena to smooth out the remaining legal problems. This group submitted a report concluding that "the terms of the Instrument should reflect its nature as a text developed and decided upon by government representatives but requiring adoption by the three Implementing Agencies to become legally effective."[156] Regarding relations

153 Raymond Clémençon has pointed out that the preferences on this issue were yet another example of where the professional background of the delegates played a role. Those delegates who were used to a World Bank model preferred to keep the Council similar to the 24-seat Executive Board of the Bank. Similarly, those who were accustomed to the much larger gathering of UN agencies' Governing Councils were less concerned with increasing the size of the GEF Council.

154 See "Global Environment Facility," Earth Negotiations Bulletin, Vol. 5, No. 13, December 21, 1993.

155 The message was conveyed by the spokesman for the OECD contact group, Mr. Ainscow.

156 "GEF Participants Meeting: Report of the Legal Working Group," Cartagena, December 6–10, 1993.

with the Conventions, it entrusted "the necessary formal arrangements to the Trustee upon request by the Council."[157] The Participants, however, had not had sufficient time to consider these conclusions.

Scientific and Technical Advisory Panel

The Chairman of the STAP, Mr. Robert Watson, also reported to the Cartagena meeting.[158] Preparations for reconstituting STAP had been ongoing since early 1993. To facilitate this process, all STAP members had handed in their resignations in the fall of 1993 (although by the time of the Cartagena meeting, the resignations had not yet been accepted by UNEP's Executive Director). The evaluation had fueled a new debate on STAP. During the pilot phase, STAP had struggled to combine the development of criteria and analytic frameworks with the time consuming task of reviewing projects. The evaluation concluded that, as a consequence, its role in science-based strategic advice had suffered.[159] At Cartagena's eventful meeting, the Participants had not spent much time considering what form the future STAP should take. They did recognize, however, that in addition to ensuring a more strategic role for STAP, effective links needed to be developed between STAP and the scientific and technical bodies of the Conventions.[160]

NGO Observer Status

The debate on observer status for NGOs at the Council meetings was another sideshow in Cartagena. The Participants had commissioned a paper that was delivered to the meeting on how to involve NGOs in the GEF.[161] By this time, more countries had come to accept NGOs as observers, but a few remained firmly against the idea. The protagonists in this subplot were the United States, which was pro-NGO, and France, which vehemently opposed NGOs observing intergovernmental meetings. Both countries had invested political capital in the issue. The specific controversy was how the Council was to decide on NGO status. France wanted a decision on observer status to be taken by consensus, while the United States felt that this was a procedural matter that should not be blocked by a single country. The two countries were to continue their debate in a bilateral context after Cartagena. (It was finally agreed that regular procedural rules would apply to this issue, which made observer status for NGOs in the Council simply a matter of time.[162])

Given the number of unresolved issues and the mood of the meeting, agreement in Cartagena would have been difficult to reach. Therefore, a number of people believe, in retrospect, that the failure to make progress in Cartagena had some positive side effects.[163] It instilled an attitude whereby the GEF agreement became more highly valued, which in turn led to a more solid agreement and ownership in the long run. However, as the delegates left Cartagena, the outcome still hung in the balance.

157 Ibid.

158 "Report by the Chairman of the Scientific and Technical Advisory Panel to the Sixth Participants Meeting," Cartagena, December 1993.

159 See "Independent Evaluation," pp. 127–130.

160 At the first Council Meeting, the Participants considered an "Issues Paper on Scientific and Technical Panel of the GEF." (GEF/C.1/5). It provided the basis for a decision at the second Council meeting to reestablish STAP. The decision stressed the importance of strategic advice, and stated that project review should be selective. The STAP was to consist of 12 members. Following this decision, Dr. Pier Vellinga was appointed Chairman of the STAP. By the time of the Participants Meeting on October 25–27, 1995, a business plan for the STAP was presented to the Council. (Document GEF/C.5/6.)

161 See "Participation by Non-Governmental Organizations in the Global Environment Facility," GEF/PA.93/2, November 30, 1993. The paper was written by Ms. Lee Kimball.

162 Regular procedural rules meant that decisions were to be taken by consensus. However, if consensus was beyond reach, a vote could be called. The precise wording of the outcome is to be found in "Instrument for the Establishment of the Restructured Global Environment Facility" March 31, 1994, Paragraph 25 (a), under the heading of Procedure. It states that the Assembly and the Council shall adopt regulations by consensus "in particular, they shall determine any aspect of their respective procedures, including the admission of observers ..." A technical note on the subject of NGOs was then submitted to the first Council meeting in Washington, D.C., on July 12–13, 1994. (See GEF IC.1/4) It was not until the second Council meeting, on November 1–3, 1994, that a decision was made to invite a limited number of NGOs to observe the Council meetings.

163 See note 153.

Remobilization—Early 1994

No one knew how the restructuring process would proceed following the failure at Cartagena. No date had been set for another meeting. Some delegates wanted the next negotiation to be held as soon as possible, preferably before the INC meetings in February.[164] At the same time, there was a sense that the next negotiations had to lead to an agreement or there was risk the GEF would be stillborn. Before the next GEF meeting could take place, both blocs needed time to reestablish their positions.

France invited other OECD delegates to a meeting in Paris in early January. The meeting's purpose was to define the boundaries of how far the OECD was willing to go. Since a number of delegations had stretched their instructions in Cartagena, an effort was made to include higher level officials with broader mandates. At the meeting, the other countries tried to impress upon France the sanctity of the USD 2 billion as a precondition for an agreement. France announced they would accede to the OECD consensus on restructuring, but did not clarify if this also included their financial contribution. On restructuring, the OECD countries agreed that the Chairmanship arrangement was central, and while the number of constituencies was still important, accommodation on this issue was likely.

During this time, a number of OECD delegates struggled with their authorities to come up with their adjusted IDA share, or in a few cases, an additional voluntary contribution. They were having problems for two reasons. One was the burden-sharing problem stemming from the limited U.S. contribution and reinforced by the French. This made it difficult to persuade other governments that they should again, as in the pilot phase, carry a proportionately larger burden. Another reason was related to the changing international agenda.From 1990 to 1992, global environmental problems had been at the forefront of public concern, but interest waned in the wake of UNCED. International attention—and with it, willingness to provide financial resources—turned to other issues, such as providing emergency assistance in problem areas such as Somalia, Rwanda, and the former Yugoslavia. Changing priorities combined with the controversies surrounding the GEF made it difficult to convince authorities in charge of hard-pressed budgets. Further, some countries had problems because they had made allocations in the 1993 budget year and it was now 1994.

Meanwhile, the leading G-77 countries also attempted to establish a bottom line. They consulted bilaterally and met in small groups in New York. While everyone supported the decision to withdraw in Cartagena, it proved more difficult to establish a united front.[165] Some countries whose representatives came from their capitals, and therefore were not part of the inner circle of New York delegates, were impatient with the tendency to prioritize details on decision-making above the level of funding. One important change since Cartagena was that Algeria had taken over the G-77 Chairmanship during 1994. The new G-77 Chairman had the advantage of being relatively unknown in GEF circles, and thus untainted by past conflicts. Some OECD countries met informally with the Algerian representative on the fringes of the INC for the Convention on Desertification in late February; they got the impression that Algeria was interested in finding a balanced resolution.

Then, from February 24 to 25, 1994, a number of Environment Ministers gathered for a consultation on the environment in Agra, India.[166] Representatives of both Northern and Southern countries took note of the delay in the GEF restructuring. It was, they stated, "detrimental to the successful implementation of the

164 The Framework Convention on Climate Change was to enter into force on March 21, 1994. The February meeting was therefore the last meeting of the INC and there was some concern that the question of financial mechanism would be reopened before the GEF negotiations were completed. The Convention on Biological Diversity had already entered into force on December 21, 1993.

165 The subject of the GEF was carefully avoided (but for three generic lines) in the report from a meeting in Kuala Lumpur in early 1994. The lack of attention to the GEF is noteworthy given that purpose of the meeting was to provide input to the first Ad Hoc Working Group on Finance established by the Commision on Sustainable Development. See "Report of the Meeting On Financial Issues of Agenda 21," Kuala Lumpur, Malaysia, February 2-4, 1994.

166 See "Chairman's Conclusion," Ministerial Consultation on the Environment, February 24–25, 1994, Agra, India.

Conventions and [was] jeopardizing the goodwill generated at Rio."[167] They urged a "speedy and successful conclusion to the forthcoming discussions." Capitalizing on this show of support from both camps, the GEF Chairman, Mr. El-Ashry, decided the time was ripe for an attempt to rebuild bridges between the blocs.

Mr. El-Ashry used the occasion of an Ad Hoc Meeting of the Commission on the Sustainable Development to invite a number of Participants to an informal discussion during a dinner in New York on March 1.[168] While this was not a time for negotiations, the occasion nevertheless gave delegates an opportunity to assess each other's positions. The dinner managed to recreate a measure of confidence; Mr. El-Ashry was asked to use his judgment and remove brackets from the documentation and prepare proposals on the unresolved issues in time for the final meeting, scheduled to take place two weeks later in Geneva.[169]

Geneva in March 1994

Restructuring

Seventy-three Participants attended the meeting in Geneva from March 14 to 16, 1994. Before coming to Geneva, the Chairman observed: "While all the indications point towards agreement, I also feel this could be the last opportunity for governments to put together a GEF."[170] Similar sentiments were echoed by Participants from both North and South. The meeting began with a brief replenishment session on the 14th, where the commitment to the USD 2 billion target was reaffirmed. It instilled a sense of confidence that the target was within reach and made it possible to proceed to the negotiations on restructuring in a reasonably optimistic mood.

This time the negotiations were conducted differently. There was a sense that the contact group arrangement in Cartagena had made it difficult to compromise without an obvious loss of prestige. The arrangement was therefore changed to include just two negotiators, one from each bloc. This format required each group to put a great deal of trust in their negotiators, who in turn had to deliver a result acceptable to a large number of people with different preferences. Among the Southern group, the natural choice was the G-77 Chairman for 1994, Algerian Ambassador Rabah Hadid, who would prove to be a skillful negotiator. The OECD countries selected one of their most experienced and respected delegates, Mr. Robert Ainscow from the United Kingdom. Mr. Ainscow played a leadership role among the OECD countries and had been the spokesperson for the OECD contact group in Cartagena.

The format meant that the bargaining would take place in a room with only three people present: the two negotiators and the GEF Chairman, Mr. El-Ashry. The advantages were that the different camps would be better able to "save face" when compromising and to give the Chairman a chance to play a mediating role. Even so, anyone who thought it would be easy to reach an agreement this time was proved wrong. The two sides were still separated by deeply held convictions; the difference this time lay in the mutual perception that brinkmanship had been abandoned for a more constructive attitude.

Despite the improved conditions, little progress was made during the first day and a half. On March 15, reports from Geneva stated that the meeting was "still no closer to compromise."[171] The unresolved issues were still the same. How often should the Assembly meet? How big should the Council be? If a vote was

167 Ibid.

168 The dinner took place on March 1, 1994, at the Beekman Towers in New York, in connection with a meeting at the UN of the Commission on Sustainable Development Ad Hoc Working Group on Financial Resources and Mechanisms.

169 In addition to his role as the Chairman of the GEF, Mr. El-Ashry was the Director of the Environment Department of the World Bank, and an Advisor the the World Bank President. The institutional connection to the World Bank did not facilitate his role as a mediator in the early stages of the negotiations. Over time, however, a level of confidence had been established. After Cartagena, the assessment was that the Chairman had "acted impartially ... as a middle man between the two blocs." See, for example, comments by Ms. Juanita Castanjo of Colombia in "Failure on GEF Due to 'Attitudes' of Wealthy Nations Colombian Official Says," International Environmental Reporter, January 12, 1994, pp. 5–7.

170 "Hopes for a global green fund at meeting today," by George Graham, Financial Times, March 14, 1994.

171 Quoted from International Press Service, March 15, 1994.

called, how large a majority was needed? Who should chair the meetings? Answers that both sides perceived to be balanced had to be found,without ripping open any already resolved issues. With only one day left to break the deadlock, the two representatives finally asked the Chairman to develop a proposal that could be used as a basis for an agreement.

The Chairman presented a two-page compromise proposal. It highlighted that the GEF was an operational body and not a policy-making institution. As such, the resulting facility would have to be capable of mobilizing substantial financial resources as well as widespread political support. The proposal also outlined the main concerns related to the contentious issues before turning to specific recommendations.

On the issue of the Council's composition, the Chairman noted that the concerns were for voice, representation, and efficiency. Based on these elements, he recommended a Council of 32 consitutencies, divided into 16 seats for developing countries, 14 for OECD countries, and two for countries with economies in transition. The proposal thereby satisfied one of the two key demands by the developing countries, i.e., that they would have a majority position on the Council. With regard to voting, the Chairman repeated that the aim was decision making by consensus, and that a vote would be called only when all reasonable efforts to reach agreement had failed. He took note of the argument that a higher special qualified majority would provide an incentive to reach consensus, and suggested that a 60-percent qualified majority would be appropriate. Turning to the issue of the Participants Assembly, the Chairman stated that the purpose of the assembly was to provide an occasion to review the general operations and an opportunity for Participants that did not frequently sit on the Council to participate directly. He recommended that a universal assembly be called every three years.

The chairmanship once again proved the most difficult issue to resolve. The proposal underlined that it "must be clear without a shadow of a doubt that the CEO and Secretariat are functioning independently from the Implementing Agencies and are accountable only to the Council."[172] (Emphasis original) Mr. El-Ashry's proposal entailed a variant of the Cartagena compromise, which envisaged two chairpersons. The CEO, who was also the Chairman of the GEF, would chair the programmatic aspects of the Council meeting agenda. Each meeting would also elect one of the Participants to chair the proceedings when administrative matters were considered. The elected Chairperson's functions would be limited to the duration of the meeting.

The Chairman's proposal succeeded in breaking the deadlock. Both sides found they could agree to the essential elements of the compromises entailed. In the continued negotiations, some elaborations were made to the division of responsibilities between the CEO and the elected Chairperson.[173] It was further agreed that the elected Chair was to alternate between recipient and non-recipient countries. The two negotiators succeeded in convincing their respective groups that the agreement was as fair and balanced an agreement as the situation allowed. The negotiators tirelessly continued work on such details of the agreement as travel compensation to the least developed countries. At three o'clock in the morning of March 16, they had reached a sufficient agreement on these smaller issues. What now remained was to secure the agreement through the replenishment session.

Replenishment

The replenishment meeting in the early morning of March 16th was brief. Many people in the OECD delegations and in the World Bank had worked hard to mobilize the resources prior to Geneva. Now the time had come for the actual pledging session. Applause accompanied the pledges, which were announced according to the size of the contributions. When the U.S. pledge opened the session, it marked a sharp contrast to the final negotiations in 1990. At that time, the United States, as the first speaker to the floor, had refused to contribute to the core fund and instead made its participation contingent on a set of conditions that included winding down the GEF in three years. Now, the U.S. pledge for a contribution of USD 430 million was the largest in absolute terms, and its commitment to the GEF was beyond doubt. The second largest donor was Japan, only slightly below the US. It too had significantly increased its support of the GEF since the pilot agreement. Then came the Ger-

172 Chairman's Proposal, Geneva, March 15, 1994.

173 The rather elaborate division of labor is detailed in the final "Instrument," paragraphs 18 and 20.

man delegate, who was pleased to announce that Germany could now pledge its adjusted IDA share of USD 240 million.

France stuck to its decision to contribute the same proportion of its IDA share as the US. Its share of USD 143 million still made France the fourth largest contributor. But while the amount was only slightly lower than France's contribution to the pilot facility, it represented a drastic change in the French commitment. France had initiated the GEF as a financial mechanism and had a parental relation to the pilot facility. The pledge to the restructured GEF signalled that France was not altogether pleased with the transformation of its creation. Soon after the Geneva meeting, France established a bilateral equivalent of the GEF—appropriately called the French Global Environment Facility. This facility, the French stated, should be seen as part of the French "membership in the Global Environment Facility."[174] The role reversal between France and the United States was striking. In the pilot phase, the United States had retained some control by contributing not to the core fund, but in the form of parallel financing; now France had found a form of "parallel" financing that was completely separate, and over which it could exercise full control.

Italy and Canada had secured their adjusted shares. The smaller European countries loyally contributed theirs, which due to the new burden-sharing system were proportionally smaller than in the first phase. Denmark and Switzerland were the only countries to pledge significant voluntary amounts above their adjusted IDA shares. The Dutch also translated its strong support of the process into a significant pledge, but the additional voluntary contribution the Dutch had advertised earlier now failed to materialize. In total, 26 countries made pledges, of which eight were developing countries.[175] With the money more than doubled for the coming three years, the replenishment was completed. Finally, a plenary session took place in which the Participants formally approved the Instrument, and thereby the permanent GEF.[176] It was time to let the world know.

Reactions to the Agreement

The world initially focused on the money. The New York Times carried an article entitled "Rich Nations Plan USD 2 Billion for the Environment." Other headlines read "Deal close on USD 2bn fund for global environment,"[177] "Agreement reached on USD 2 billion replenishment of Global Environment Facility,"[178] "2 Billion dollars for the Global Environment Facility,"[179] and "Donors pledge more for environment."[180] And the money was a significant achievement. A mere fraction when compared to the estimates of financial needs for sustainable development at Rio, it was nonetheless the only source of new and additional funds for the environment to materialize after UNCED.

The developing countries had made their agreement conditional on the USD 2 billion. And although they declared that the fundamental decision-making system was the main priority, the target amount had become symbolic of the North's commitment. On both accounts, they were reasonably pleased with the outcome. "Group of 77 efforts rewarded by success on GEF" read the headline in their journal. The article went on to say that the "arrangements are certainly not ideal. But given the circumstances, they are probably the best that can be achieved."[181] Satisfaction with the outcome on the decision-making system is evident among people who represented delegations from the South.[182] The views of the OECD delegates are more mixed and range from: "We got a very good agreement in Geneva" to "We gave away too much."[183] And Mr.

174 "Presentation of the French Global Environment Facility."

175 See press release "Agreement on New Global Environment Facility," March 16, 1994.

176 The document that was adopted on March 16, 1994, was released as "Instrument for the Establishment of the Restructured Global Environment Facility," dated March 31, 1994.

177 Financial Times (UK), March 17, 1994.

178 Nihon Keizai Shimbun, Japan, March 17, 1994.

179 Le Monde, March 18, 1994.

180 The Earth Times, March 18, 1994.

181 Journal of the Group of 77, Volume 7, Number 3, March 1994.

182 Personal communication with delegates from eight G–77 countries.

183 Personal communication with delegates from ten OECD countries.

El-Ashry has observed that "It is a compromise, but not one that compromises efficiency and effectiveness."[184]

The first meeting of the Governing Council took place from July 12 to 13, 1994. By this time, the sticky issue of dividing countries into constituencies had been completed. The goal of universal participation was in sight as 115 countries, representing more than 95 percent of the world's population, had given notice of their participation in GEF.[185] At the first meeting, the Council appointed Mr. El-Ashry to be the first CEO and Chairman of the GEF.[186] (Because the position was full time, Mr. El-Ashry resigned from his position as Director of the Environment Department in the World Bank.) Mr. N. K. Singh of India became the first elected Chairman. The Council moved on to consider operational modalities. The permanent phase was set to begin.

184 Personal communication.

185 List of submissions as of July 11, 1994. "List of Participants in the Restructured GEF," GEF/C.1/Inf.3.

186 See press release of July 12, 1994.

4 What Does the Restructured GEF Signify?

The preceding account shows how the restructured GEF was shaped through attempts to steer a highly political process. The paper followed the process that began when the pilot facility was confronted with the new political situation that emerged around UNCED. The need to resolve financial issues in time for signing the Conventions at Rio led to an inclusive agreement on principles. It declared that the GEF should be restructured in a way that accommodated both the economic values, i.e., efficiency and effectiveness, that dominated the pilot facility and the more political perspective of inclusion and democracy that was articulated at UNCED. Translating this agreement into a functional mechanism became a matter of navigating around the conflicting preferences and aversions associated with these perspectives. Principles were progressively condensed into specific but interlinked issues. At the same time, polarization increased until, in the end, the two blocs seemed like Scylla and Charybdis, between which the GEF had to pass 'with no more than a bowshot' to maneuver. At this point, the final compromise was struck.

The outcome can be evaluated from a number of vantage points. Many of the early assessments came from those who held a stake in the process, and who regarded the final agreement as the end of a political battle. They tended to evaluate the result in narrow terms, focusing on what each side had gained or given up in relation to their original preferences. And the specific, rather technical issues of the final rounds certainly lend themselves to such calculations of wins and losses. But in viewing the GEF narrowly, as the outcome of a bargain, it is easy to overlook the distinctive features of the restructured facility.

If we instead step back to assess the restructured GEF as a whole, and in relation to other multilateral instruments, the novel characteristics of the GEF model become visible. It is clear that these features were less the result of a singular will or vision than the result of the process itself. One effect of the many conflicts of interest was that a number of conventional solutions were blocked, prompting a search for alternative approaches. A contributing factor was that because the GEF is an instrument built for action, the common diplomatic techniques of deferring difficult decisions or watering down the text to generalities were not viable options. Such approaches would have produced either a complete operational shutdown or a de facto transfer of decision-making power from the decision-making fora to the practical level as in the pilot phase. There was strong pressure therefore to resolve the conflicts within the negotiations, and the attempts to accommodate divergent preferences within one instrument yielded the institutional innovations visible in the GEF.

The unusual design of the instrument has obvious consequences for how global environmental problems are being addressed. It also increases the relevance of the GEF beyond the area of the environment; in several respects, the restructured GEF provides a new and different answer to current concerns about the future of international cooperation. Such a claim calls for a closer investigation. For this reason, this section explores four features of the restructured GEF in more depth:

1) The formulation of the global mandate, which is founded on a distinction between global environmen-

tal needs and national priorities, and serves to make the GEF a specialized mechanism for global problems;

2) The multiple constituencies of the GEF, which illustrate both the difficulties and the benefits of addressing new problems by combining forces from different fields;

3) The governance system, which is a hybrid between the UN and the Bretton Woods systems, and reflects the ambition to create an instrument that combines concerns for legitimacy and effectiveness; and

4) The role of the GEF in the larger regime for global environmental problems, which holds out the promise of a new model for international cooperation, one which allows for greater functional differentiation than is currently the case in other regimes for other collective problems.

But before delving into an assessment of these features, it is worthwhile to look briefly at the international context in which the restructuring took place. Against this background—in which the challenge of mobilizing multilateral financial resources is significant—it becomes easier to appreciate the difficulties involved.

The interdependent world of today calls for effective multilateral instruments to handle collective problems. But multilateral initiatives—or reform—are notoriously difficult to institute even when they concern obligations that states are to carry out within their national borders.[187] In cases that require moving beyond the realm of diplomacy and into multilateral activities, these difficulties multiply. Such actions require the mobilization of multilateral financial resources, which is arguably the most challenging aspect of international cooperation. For this reason, new sources of finance typically come about in the aftermath of a major international calamity, when a lack of cooperation has become painfully obvious.

When it comes to environmental problems, the mid to late '80s brought a time of opportunity that made this bleak picture look considerably brighter. Diligent work by NGOs combined with scientific knowledge raised public concern to a level that is usually reserved for crisis events. It paved the way for various international initiatives, including the GEF pilot facility. UNCED was both cause and effect in this context, and led the interest in environmental issues to peak with the Rio Conference in 1992. Global environmental problems received much of the attention, in part due to the signing of the conventions for climate change and biodiversity. UNCED also stressed the need for new and additional financial resources for the environment. It compelled a number of leaders from developed countries to state their intentions to increase financial support via a number of channels, which included a restructured GEF.

These statements and the high level of concern created the impression that new and additional funding for environmental purposes was a foregone conclusion. But as we have seen, funding for the GEF was the only significant source of such funding to come through. Therefore, although public concern was essential in creating a momentum, it cannot by itself explain the outcome. It is worth recalling, for example, that at no point was there willingness to sponsor a generic green fund. And resistance continued against separate funding arrangements as part of the global environmental conventions. Moreover, there was insufficient support for an Earth Increment within the IDA framework. Therefore, the UNCED experience de facto showed that even when global concern for environmental problems was at its highest, multilateral funding that enabled action was not, as a rule, forthcoming. In this context, the GEF stands out as an exception.

It therefore seems wrong to assume that because the time was ripe for environmental action, funding could have been mobilized for a range of purposes, and been supplied to a variety of alternative instruments. It is

187 Theories of international relations do not have a problem explaining why multilateral instruments are difficult to create. Such attempts, no matter how urgent or worthy, has to overcome the obstacles presented by the international system itself. This system is structured in a way that induces governments to put the national interest above common concerns. In this respect it resembles the type of structural problem that environmentalists are familiar with through Hardin's "tragedy of the commons," but it can also be put in game theory terms as a Prisoner's Dilemma. Both illustrate a situation where there is a built-in incentive for each actor to behave in accordance with a narrowly defined self-interest, despite the realization that if everyone behaves the same way, all will suffer in the long run. The consequence for the international system is a chronic deficit of will and capacity to address common problems.

more plausible that funding was not very fungible, and would be made available only under a limited set of conditions. This is in keeping with the conclusion that innovation resulted from the divergent agendas: what happened was that a broad range of actors were brought together, and in working out their differences, they had to look for unconventional approaches to find a balance capable of keeping the GEF on the relatively narrow path of possibility. It is thus likely that the GEF managed to beat the odds precisely because of the way it was defined and structured. This makes an investigation into the unusual features of the restructured facility all the more relevant.

The Importance of the Mandate

The GEF mandate rests on the notion that funding of global environmental problems can be provided distinct from funding of other environmental problems. Put casually, it means the GEF aims to fund activities for global, and nothing but global, environmental problems. The concept of separate funding for a strictly global dimension is clearly unusual, and has no equivalence among other international regimes. This mandate was inherited from the pilot facility and is not particular to the restructured facility. It did, however, withstand numerous challenges in the restructuring process, in particular during the early phases. We have seen that it survived primarily due to the insistence of developed countries. The issue here, however, is not whether it was politically necessary to hold on to this formulation of the mandate, but whether it makes sense. Since the mandate is fundamental to the role the GEF plays in addressing global environmental problems, and since it continues to be a source of both controversy and misunderstanding, it is important to understand both the motivation and effects involved.

Most people would agree that global environmental problems are a prime example of a collective concern that calls for concerted efforts at the multilateral level.[188] And given the unequal distribution of income between countries, both fairness and pragmatism speak in favor of assisting developing countries to participate in efforts to protect the global environment. However, even if we acknowledge the need for a specific mechanism to fund actions in the global environmental interest, there are different ways of formulating the mandate. A minimum requirement is that all activities, independent of where they are carried out geographically, should address global environmental problems. The key question is how global environmental problems are defined, and which criteria are used to select areas for funding.

The four focal areas of the GEF were determined a priori, based on informal agreements in a variety of scientific and political fora that the four areas were indeed global issues. The GEF then employs two different types of criteria to select priority areas for funding. The first, and uncontroversial, set of criteria is scientific. It would have been entirely conceivable, as some have suggested, to design a facility based on this type of criteria alone. Such a mechanism could have been oriented toward identifying environmental hotspots based on scientific assessments; the total cost of these interventions could then have been funded. It would, however, have created distortions in several respects. First, it would have reduced the incentive individual countries have in addressing major environmental problems on their own. It would have been entirely rational for eligible countries to compete for a multilateral bailout of their most serious problems. Moreover, if such a fund were to have significant resources, it would have meant not only a green fund but "global conditionality" for those countries in need of multilateral assistance. In order to attract funding, poor countries would have been induced to consider the green, global agenda more carefully than rich countries. This is, of course, the basic reason for the demand that environmental funding must be additional to assistance oriented toward national development.

This leads to the additional set of criteria used by the GEF—the concept of incremental cost. Incremental costs are commonly defined as the additional costs required to make an activity yield global benefits. One aim is to identify which environmental activities can be considered above and beyond what an individual country can reasonably be expected to do in the absence of GEF funding. A second ambition is to fund global environmental problems in a way that is "cost-neutral" vis a vis the development agenda. The concept of incremental cost has been controversial, in part because it presupposes that global and national benefits can be distinguished. It should be noted, however, that this is a conceptual distinction, or analytic

188 The basic argument for a special mechanism for global environmental problems is described in this paper under the heading "The Rationale for the GEF Pilot Phase."

tool, for the purpose of decisions on funding. It does not mean that in practice implementation of GEF projects is to be separate from other activities. On the contrary: one of the reasons for linking GEF to the implementing agencies was precisely to identify opportunities for integration with other projects and programs at the operational level.

It is clear that neither the scientific criteria nor the incremental cost concept completely eliminates the need for subjective—or political—assessment. There is, for example, no scientific way of adjudicating between a drop in emissions that may cause climate change, and protecting a certain number of species. And there is no certain way of assessing what a country may have done had GEF funding been unavailable. Nevertheless, it is the combined effect of these two types of criteria that define the GEF mandate and give it its particular character.

The "strong" definition of the global mandate makes the GEF a specialized and compensatory mechanism. This has consequences that are of interest if we want to understand both what the GEF can and cannot do, and why it ensured support. The main purpose of the GEF from a developing country perspective is to provide the financial means to incorporate measures for the global environment as part of other plans and activities. It enables developing countries to go beyond being part of rule-making at the international level, to become active participants in multilateral efforts to protect the global environment. And in those global environmental areas covered by a convention, GEF funding enables developing country signatories to fulfill their obligations.

A related effect of the GEF mandate is to reinforce that this is a mechanism for collective self-help. The "strong" definition means that GEF is not intended as assistance to a particular location, people, or nation. While GEF funding can be expected to improve local conditions where projects are implemented, its primary *raison d'etre* is assistance to the planet, thereby benefiting all people wherever they happen to be. Support of the GEF still requires that the Participants' conception of self-interest takes environmental interdependence to heart, but contributions to the GEF should not be construed as generosity, aid, or altruism. The GEF mandate goes a long way to underline and ensure that it is the collective interest in the planet that is at stake here; these are not problems that fit into categories of "us" and "them."

Finally, the way the mandate is defined makes it possible for the GEF to play an enabling role in the larger regime for global environmental problems. This effect will be discussed in more detail in the last section. It concerns the GEF's ability to alleviate a potentially serious obstacle against strengthening the larger multilateral framework to the benefit of the global environment.

Multiple Constituencies

It is widely acknowledged that environmental problems cannot be resolved in isolation from other functions of society. This insight has yielded attempts to find approaches that can overcome traditional barriers between academic disciplines, administrative sectors, and other established dividing lines. At the international level, the sectoral divisions are upheld by the stratified structure in which different ministers function as patrons of "their" international agency. UNEP meetings, for example, attract environment ministers, while finance ministers gather at the Bretton Woods institutions. Although considerable work has gone into integrating environmental aspects into the regular work of international agencies, the common outlook fostered within these constellations conserves traditional approaches and hampers cross-sectoral innovations.

It should be obvious from the preceeding account that the GEF does not conform to this pattern. The GEF brings together people from ministries of finance, development cooperation, environment, and foreign affairs. The restructuring process provided ample evidence that these groups do indeed bring different agendas to the table, and that in this situation agreement is difficult.[189]

189 During the negotiations, the different perspectives were clearly identifiable. The position and attitude of a country depended to a large extent on which ministry was in charge of the delegation, although this is more difficult to detect in the final stages when the North-South struggle demanded increased group discipline. When, for example, developing countries entered the process in large numbers, many of the new representatives were from foreign affairs, and their concerns were markedly different from those developing countries represented by their finance ministries. Moreover, all countries that included different branches in their delegations, or in their domestic policy discussions, report that different ministries frequently clashed over issues related to the GEF. There also was a noteworthy correspondence between the views of ministries and the international agencies they are normally associated with.

On the other hand, the multiple interest groups can also be viewed as a cause of some of the innovative features of the GEF.

The GEF must continue to find its support among multiple constituencies. There is no corresponding structure at the national level that can act as the natural ally of the GEF. Support is therefore more vulnerable than in those cases where international agencies can rely on a particular ministry to promote its interests at the domestic level. These ministries may prefer to support mechanisms that correspond more closely to their agenda, where the view on how things should be handled is more unified. The GEF has to keep watch on the balance between its various constituencies in order not to alienate some. Even so, the current design reflects past compromises and contains some aspects which create ambivalence.

A case in point is the fact that the GEF marries the political goal of protecting the global environment not only to scientific considerations, but also to the prosaic world of financial concepts. The traditional way of handling an international problem is that a political initiative is followed by negotiations among professional diplomats. Attempts are then made to add funding as a separate component of a near completed agreement. Should the attempt fail, as frequently happens, the agreement remains, although weakened in terms of its potential for implementation. The GEF provides a sharp contrast to this procedure. One reason is obviously that it was initiated and developed by people whose professional affiliation is with finance. Far from an added afterthought, financial considerations were at the heart of the arrangement from the beginning. This is reflected, for example, in the bearing concepts, which are cast in terms of costs and benefits. There is little doubt that the construction was reassuring to ministries of finance, which for obvious reasons have a significant say in decisions on funding. Their involvement helped to push the pilot facility over the threshold from proposal to a relatively well-endowed reality.

This is not to say that financial principles are more important, or that initiatives led by finance are more viable. (It should be clear by now that, as originally structured, the future of the GEF would have been limited.) It is simply to point out that most multilateral initiatives are handled by political channels where finance is seen as a technical and extraneous issue, while in the case of the GEF, financial principles were an instrinsic part of the process. But while the original arrangement was satisfying from a financial perspective, it won neither the hearts nor minds of those who saw the GEF from other points of view. The restructuring grew out of the realization that confidence in the original set-up was not shared by all parties with an interest in the GEF and that, in this new situation, its legitimacy was found wanting. The balance between the financial and political values was redressed in the restructuring, but the inherent tension remains. Environmentalists, for example, are likely to continue to think that the GEF is too dominated by financial concerns. Similarly, people trained in finance tend to think that the facility has become embroiled in political maneuvering. There is a risk that the necessary balancing act will make the GEF a favorite of none.

The GEF therefore depends on a continued recognition of the value of intersectoral cooperation. It requires that learning and innovation continue to be distinctive marks of the GEF. And it requires an appreciation of the difficulties and compromises this necessarily involves. If we take seriously the lesson that the environment calls for approaches that can overcome traditional boundaries, not only between countries but also between established perspectives, the GEF simply represents a beginning in this respect.

A Hybrid Governance System

The governance system is the most widely recognized innovation of the restructured GEF. It is the most concrete expression of the balance between principles that was the goal of restructuring. As such, it manifests the compromise between all the dichotomies involved in the process: North and South, efficiency and legitimacy, and UN and Bretton Woods systems. The fact that the decision-making system borrows components from both the UN and the Bretton Woods systems is not a mere technicality. Attached to this hybrid model are expectations that go far beyond its value as a scorecard of the negotiations, and relate to current concerns about both the effectiveness and legitimacy of international mechanisms.

Traditionally, decisions on multilateral funding have taken place in a Bretton Woods setting that places a high value on the fulfillment of economic criteria, such as efficiency, cost-effectiveness, and financial accountability. Decision making in such a setting reflects the relative contribution of member states, which favors developed countries. The UN system, on the other hand, is a political structure designed to further political values such as country-based democratic representation, universality, and accountability through institutions that are open and responsive to their constituents. The main decision-making principle is one country, one vote, which puts developing countries in a majority position.

Although few people would hold that these two sets of values—economic and political—are incompatible, it is clear that both the UN and Bretton Woods systems institutionalize a bias toward one set of values, while being criticized for neglecting the other. The UN, struggling with a dire financial situation, is under fire for being both ineffective and inefficient. And the legitimacy of the Bretton Woods system has suffered as the Bank has been charged with, inter alia, insufficient transparency and undemocratic decision-making procedures, excessive reliance on neoclassical economic theories, and inadequate sensitivity toward political, social, and environmental concerns. Both systems are now engaged in the difficult task of reforming their practices within the existing decision-making system and cultures.

The GEF governance system is interesting in this context because it is specifically designed to promote a balance between these two sets of values. Voting by way of the double majority system, for example, reflects both the one-country, one-vote principle and the relative contributions of Participants. The more modern governance system of the GEF reflects how values have evolved during the 50 years since the other systems were created. It is no longer self-evident that contributors dominate decision making on how the funds they provide will be used. And, at the same time, the last decade has brought a new respect for the economic realities that apply to international mechanisms. The hope is that the governance system of the GEF will prove that the desired economic and political values can be successfully combined. At the very least, it will become an interesting testing ground with regard to how multilateral decision making can be improved.

Role in the Larger Regime for Global Environmental Problems

The final aspect to be discussed concerns the potential for creating a unique international regime for global environmental problems. It consists of the global environmental conventions, the GEF, and the implementing agencies. While this regime is not yet fully developed, the international community has the option to create a novel model of cooperation that can be viewed as a maturation of the multilateral system. In order to see the potential benefits of this model, a comparison with alternative international environmental responses is provided.

When the environment emerged as an issue of widespread concern, skepticism about international bureacracies disqualified the common method of creating new organizations for newly discovered problems. Instead, the method of choice became the creation of separate multilateral treaties for carefully delimited problem areas. The increase in the number of multilateral environmental agreements (MEAs) testify to the popularity of this approach. By one count, more than 130 multilateral agreements are now in existence, with an average of 4.2 being added annually.[190] Initial investigations indicate that these agreements, which rely on national implementation, are often effective in terms of increasing political concern and improving domestic capacity for environmental management.[191] In addition, the example of the Montreal Protocol has shown that the so-called treaty method can also be flexible: agreements that are initially weak can be incrementally strengthened as political and scientific consensus evolve.

As institution building has given way to implementation, however, several problems with this method have become apparent. One obvious concern is that the sheer number of agreements make implementation costly and cumbersome for governments. A recent study found Sweden, for example, to be a party to 181 environmentally related agreements. As a result, envi-

190 See "Evolving International Law," by Peter M. Haas and Jan Sundgren. In Nazli Choucri, ed., *Global Accord: Environmental Challenges and International Responses* (Cambridge, MA: MIT Press, 1993). Pp. 401–430.

191 See, for example, "Improving the Effectiveness of International Environmental Institutions," by Marc A. Levy, Robert O. Keohane, and Peter M. Haas. In Levy, Keohane, and Haas, eds. *Insitutions for the Earth: Sources of Effective International Protection.* (Cambridge, MA: MIT Press, 1993) Pp. 397–426.

ronmental lawyers have voiced concern for treaty congestion. And since implementation of environmental agreements is demanding both in terms of institutional and financial resources, it follows that developing countries will experience the most serious difficulties.[192] For this reason, some multilateral agreements—including the global environmental conventions—have made developing country obligations contingent on the supply of new and additional funds. So far, however, the treaty method in general has not been successful in mobilizing funding.

A related problem parallels the fear of treaty congestion at the level of funding. MEAs usually come with their own, relatively small, trust fund arrangements, and warnings have been raised that this may lead to a corresponding "trust fund congestion," that "could lead to chronic funding fatigue."[193] These problems will not be lessened as the number of agreements increase and as most MEAs strive to incrementally strengthen their provisions. It suggests that the marginal benefit of adding to treaty obligations may decrease and that the very success in creating MEAs is producing its own limitations.[194]

These systemic problems are serious for the future implementation of global environmental accords. Even if there are relatively few agreements in this area, implementation, in light of these complex problems, is taxing, and strengthening obligations remains on the agenda. Moreover, global problems by definition mean that developing countries have to be on board as active Participants. And these countries, for economic as well as historical reasons, are particularly unlikely to favor strengthening these agreements if it means costly measures in exchange for the uncertain promise of a better world for all in the distant future. Taken together, this leads to the conclusion that a minimum requirement for moving ahead is assisting developing countries with their share of the burden.

The issue of funding is hence central also to the legal process. And in this perspective the GEF model becomes interesting. It provides a way to connect the emerging system of legal treaties with the existing system for on-the-ground delivery in the area of global environmental problems. From a hierarchical perspective, the GEF's position in this regime is in the middle: it is "below" the conventions it is intended to serve, but "above" the agencies employed for developing and implementing projects. Integration hence takes place at two levels: first, guidance from more than one convention can be taken into account and translated into action programs, and second, GEF-funded activities can, where appropriate, be integrated into the regular work flow of the implementing agencies, and coordinated with national and regional plans. The GEF, in other words, acts as a connection between the regulatory realm and the realm of practice.

The potential advantages with this model are obvious. It allows for a functional differentiation where each component of this regime can specialize in the domain where they have their respective strength. The conventions, which each cover a complex global problem, can focus on what they are known to do well: furthering the scientific processes, setting priorities in their area of concern, and deciding on policy guidance and rules. The deliberative processes of the conventions have a proven record when it comes to developing legal agreements. This type of instrument has historically been less effective, however, when it comes to efficient decision making and executing practical measures. And with regard to funding, the empirical evidence, which goes far beyond UNCED and the GEF model, shows that potential contributors are reluctant to entrust significant resources to institutional structures in which they perceive they have insufficient say over the use of funds.

If we think in terms of developing an effective overall structure, much speaks in favor of leaving decision making and execution on practical functions to other instruments, governed by other systems and principles. The role of the GEF in this model is hence to convert the guidance from the conventions into action by mobilizing the necessary funds and developing concerted, operational programs. The linkages that

192 It is relevant in this context that most studies on effective MEAs have been among developed countries, which have both the resources and the institutional capacity to implement the agreements.

193 See Peter H. Sand, "Trusts for the Earth: New Financial Mechanisms for International Environmental Protection," The Josephine Onoh Memorial Lecture 1994, published by The Hull University Press, 1994.

194 An additional problem is that not much progress has been made where environmental issues infringe on the functioning of other regimes created for other purposes, such as trade.

exist between different environmental issues suggest that there is considerable room to identify synergies between mechanisms designed to address a certain kind of environmental problem. An additional task of the GEF is to search for innovative ways to improve the practical side, for example, by developing local trust fund arrangements and by bringing the expertise of non-governmental organizations into the process. The implementing agencies, for their part, have their comparative advantages at the operational level. Their task is to develop work programs and projects, whereby global environmental problems are integrated into plans for national and regional sustainable development.

If this model were fully developed, it would be a deviation from regimes that are vertically stratified according to a specific problem area. It is also a deviation from the type of comprehensive regime that proved so difficult during the long negotiations for the Law of the Sea. Instead, differentiation is made according to function rather than issue area. Integration takes place at the level of implementation, in contrast to the conventional—and generally unsuccessful—attempts to coordinate international action from above. This model builds on linkages between different types of instruments, each with a different purpose and institutional structure. It means that each instrument can work to improve its area of competence—strengthening legal agreements, deepening scientific knowledge, and improving operational procedures—without being asked to take on areas beyond its capacity.

It is in this light, beyond the power play, that the significance of the restructured GEF becomes visible. The success of efforts to protect the global environment depends crucially on including all parts of the world. By making it financially possible for developing countries to participate actively, the GEF helps overcome one serious obstacle to strengthening collective action for the global environment. The GEF cannot by itself do much to alter the patterns that give rise to global environmental problems; it must be part of broader efforts. But because of the way it was restructured, it has the ability to connect separate instruments into a larger regime for global environmental problems. This regime, with separate legal, financial, and implementing components, not only has the potential to counteract global environmental problems more effectively, but it also provides the international system with a promising new model for cooperation.

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